

No. 13713

United States
Court of Appeals
for the Ninth Circuit.

GOLDEN GRAIN MACARONI COMPANY,
INC., a Corporation, and PASKEY DEDOM-
ENICO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

JUL 9 1953

PAUL H. O'BRIEN
CLERK

No. 13713

United States
Court of Appeals
for the Ninth Circuit.

GOLDEN GRAIN MACARONI COMPANY,
INC., a Corporation, and PASKEY DEDOM-
ENICO,

Appellants,

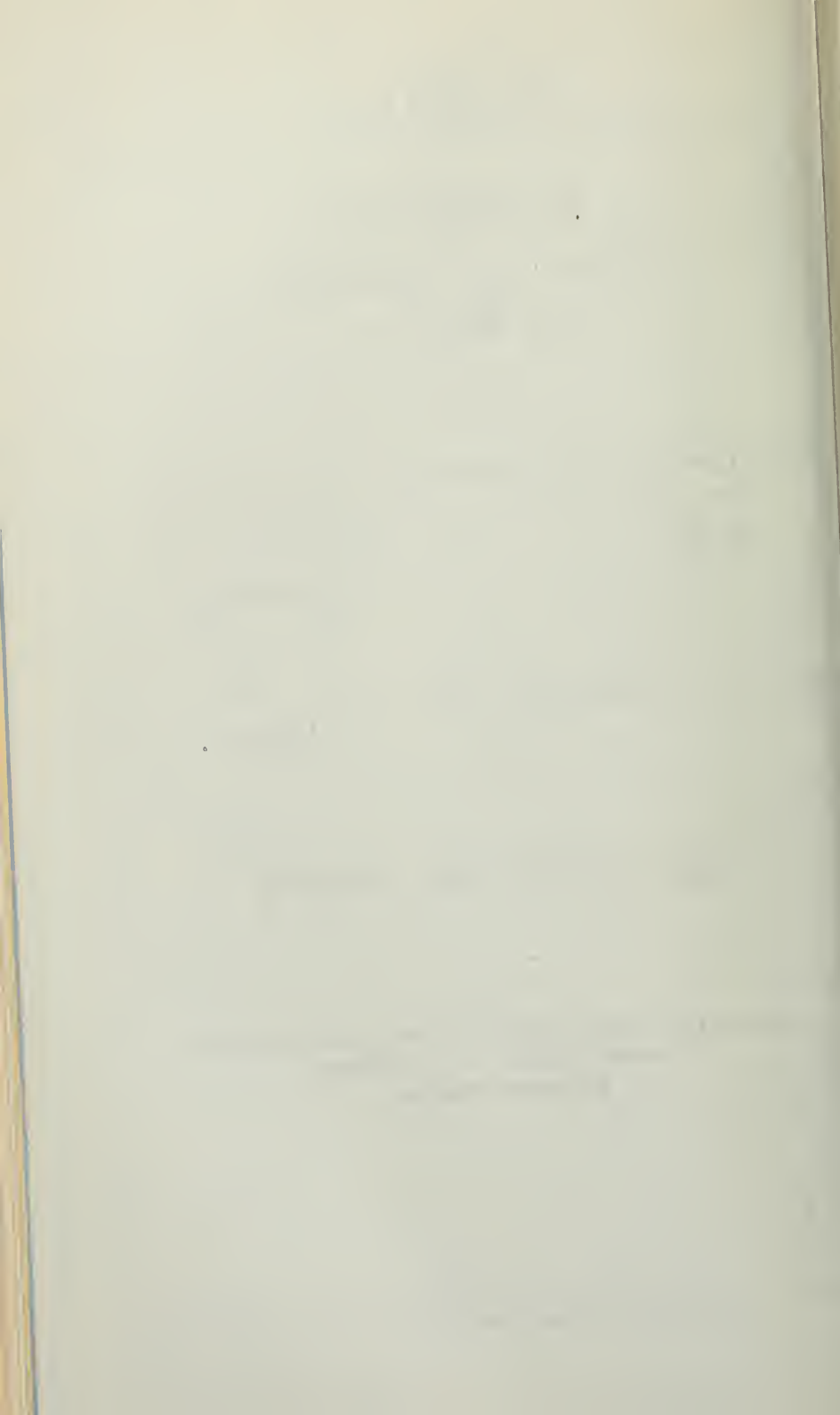
vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

| | PAGE |
|--|-------------|
| Certificate of Clerk to Additional Supplemental Record on Appeal | 311 |
| Certificate of Clerk to Record on Appeal | 306 |
| Certificate of Clerk to Supplemental Record on Appeal | 310 |
| Indictment | 3 |
| Judgment Against the Defendant Golden Grain Macaroni Co. | 13 |
| Judgment, Sentence and Order of Probation Against Defendant Paskey Dedomenico | 14 |
| Motion for Stay of Execution and Relief Pend- ing Review | 19 |
| Names and Addresses of Counsel | 1 |
| Notice of Appeals | 17 |
| Order Refunding Cash Bail | 21 |
| Order to Stay Execution | 20 |
| Statement of Points on Which Appellants In- tend to Rely | 312 |
| Stipulation Concerning Designation of the Record for Printing | 315 |

| | INDEX | PAGE |
|---|-------|------|
| Transcript of Proceedings Re Motion for New Trial | | 305 |
| Transcript of Proceedings | | 22 |
| Witnesses, Defendants': | | |
| Butler, Allen T. | | |
| —direct | | 192 |
| Carr, William J. | | |
| —direct | | 272 |
| —cross | | 276 |
| Dedomenico, Muriel | | |
| —direct | | 279 |
| Dedomenico, Paskey | | |
| —direct | | 283 |
| —cross | | 291 |
| Dedomenico, Vincent Michael | | |
| —direct | | 217 |
| Gustafson, Dr. Paul V. | | |
| —direct | | 277 |
| —cross | | 279 |
| Hubert, Morris J. | | |
| —direct | | 262 |
| —cross | | 266 |
| —redirect | | 267 |
| McDiarmid, Jack Kennedy | | |
| —direct | | 182 |
| —cross | | 185 |
| —redirect | | 191 |

INDEX

PAGE

Witnesses, Defendants'—(Continued):

Mulvaney, Joseph W.

—direct 194

—cross 210

—redirect 216

Oddson, Swain

—direct 270

Reynolds, Alfild H.

—direct 297

—cross 298

Spinelli, John

—direct 228

—cross 250

—redirect 258

—recross 259

Witnesses, Plaintiff's:

Allen, Horace A.

—direct 150

—cross 152

Chambers, Charles M.

—direct 45

—cross 48

—redirect 51

Dicecco, Colleen

—direct 105

| INDEX | PAGE |
|-------------------------------------|-------------|
| Witnesses, Plaintiff's—(Continued): | |
| Edwards, Arthur G. | |
| —direct | 23 |
| —cross | 26 |
| Elliott, Robert T. | |
| —direct | 153 |
| —cross | 164 |
| —redirect | 179 |
| Ford, James A. | |
| —direct | 40 |
| —cross | 43 |
| —redirect | 44 |
| Gardner, Edwin A. | |
| —direct | 32 |
| —cross | 37 |
| Hyatt, Edward | |
| —direct | 39 |
| Johnson, Katherine | |
| —direct | 301 |
| —cross | 302 |
| Monfore, Kenneth E. | |
| —direct | 54 |
| —cross | 57 |
| —redirect | 63 |

INDEX

PAGE

Witnesses, Plaintiff's—(Continued):

| | |
|----------------------|----------|
| Pugh, William | |
| —direct | 30 |
| —cross | 31 |
| Purdy, Everett Lewis | |
| —direct | 27 |
| —cross | 28 |
| Shallit, Fred | |
| —direct | 76, 106 |
| —cross | 122 |
| —redirect | 139, 146 |
| —recross | 141, 149 |
| Shoop, Laura | |
| —direct | 63 |
| —cross | 68 |
| —redirect | 74 |
| —recross | 75 |

NAMES AND ADDRESSES OF COUNSEL

ROBERT A. YOTHERS, of
POMEROY, YOTHERS, LUCKERATH & DORE,
304 Spring Street,
Seattle 4, Washington,
Attorneys for Appellants.

J. CHARLES DENNIS,
1017 U. S. Court House,
Seattle 4, Washington,
Attorney for Appellee.

United States District Court, Western District
of Washington, Northern Division

No. 48,518

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOLDEN GRAIN MACARONI COMPANY,
INC., a Corporation, and PASKEY DEDOM-
ENICO, an Individual,

Defendants.

INDICTMENT

The Grand Jury charges:

Count I.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did, within the Northern Division of the Western District of Washington, on or about June 25, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for delivery to Lewiston, State of Idaho, consigned to

McPherson's Surefine, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Golden Grain
Enriched
Egg Noodles
1 Lb. Net
Golden Grain Macaroni Co.
San Francisco—Seattle

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within the meaning of 21 U.S.C. 342 (a) (3) in that it consisted in part of a filthy substance by reason of the presence in said food of insect larvae and insect fragments.

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

Count II.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did, within the Northern Division of the Western District of Washington, on or about July 16, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for delivery to Missoula, State of Montana, consigned to County Fair Market, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Golden Grain
Enriched
Cut Macaroni
1 Lb. 8 Oz. Net
Golden Grain Macaroni Co.
San Francisco—Seattle

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within

the meaning of 21 U.S.C. 342 (a) (3) in that it consisted in part of a filthy substance by reason of the presence in said food of insect fragments;

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

Count III.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did, within the Northern Division of the Western District of Washington, on or about July 16, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for de-

livery to Eugene, State of Oregon, consigned to General Grocery Company, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Elbow Macaroni
20 Lbs. Net
Golden Grain Macaroni Co.
Seattle, Wash.

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within the meaning of 21 U.S.C. 342 (a) (3) in that it consisted in part of a filthy substance by reason of the presence in said food of insect fragments;

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

Count IV.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did, within the Northern Division of the Western District of Washington, on or about July 16, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for delivery to Eugene, State of Oregon, consigned to General Grocery Company, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Spaghetti

20 Lbs. Net

Golden Grain Macaroni Co.

Seattle, Wash.

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within the meaning of 21 U.S.C. 342 (a) (3) in that it consisted in part of a filthy substance by reason of the presence in said food of insect fragments;

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

Count V.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did, within the Northern Division of the Western District of Washington, on or about July 26, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for delivery to Anchorage, Territory of Alaska, consigned to J. B. Gottstein Company, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Golden Grain
Enriched
Elbow Macaroni
14 Oz. Net
Golden Grain Macaroni Co.
San Francisco—Seattle

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within the meaning of 21 U.S.C. 342 (a) (3) in that it consisted in part of a filthy substance by reason of the presence in said food of insect fragments;

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

Count VI.

That the Golden Grain Macaroni Company, Inc., a corporation organized and existing under the laws of the State of California and trading and doing business at Seattle, State of Washington, and Paskey Dedomenico, an individual, at the time hereinafter mentioned president of said corporation, did within the Northern Division of the Western District of Washington, on or about July 26, 1951, in violation of the Federal Food, Drug and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Seattle, State of Washington, for delivery to Anchorage, Territory of Alaska, consigned to J. B. Gottstein Company, a number of packages containing a food;

That displayed upon said packages, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was, among other things, the following printed and graphic matter:

Golden Grain
Thin Spaghetti
Net Wt. 14 Oz.
Manufactured by
Golden Grain Macaroni Co.
San Francisco—Seattle

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was then and there adulterated within the meaning of 21 U.S.C. 342 (a) (3) in that it con-

sisted in part of a filthy substance by reason of the presence in said food of insect fragments;

That said food, when caused to be introduced and delivered for introduction into interstate commerce, as aforesaid, was further adulterated within the meaning of 21 U.S.C. 342 (a) (4) in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated with filth;

That on March 14, 1947, the said Golden Grain Macaroni Company, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act (Docket No. 47116), which conviction had become final before the violation hereinbefore alleged was committed.

All in violation of Title 21, U.S.C., Sections 331 and 333.

A True Bill.

/s/ [Indistinguishable],
Foreman.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

United States District Court, Western District
of Washington, Northern Division

No. 48,518

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOLDEN GRAIN MACARONI COMPANY,
INC.,

Defendant.

JUDGMENT

On the 5th day of December, 1952, the attorney for the Government, and the defendant, Golden Grain Macaroni Company, Inc., a corporation, appearing by its president, Paskey Dedomenico, and by its attorney, Robert A. Yothers, and the defendant having heretofore entered a plea of not guilty and having waived trial by jury, and a trial having been heard to the court without a jury with the consent of the plaintiff, and with the approval of the court, and the court having heard the evidence offered by the plaintiff and the defendant and having heard argument of counsel, now finds:

That the defendant is not guilty of the charge contained in Count I of the indictment and is guilty of the offenses charged in Counts II, III, IV, V and VI of the indictment, to wit: of violations of Sections 331 and 333 of Title 21, U.S.C. (interstate shipment of adulterated food products).

It Is Adjudged that the defendant is guilty as

charged on Counts II, III, IV, V and VI of the indictment and is convicted.

It Is Adjudged that the defendant pay to the United States of America a fine in the sum of \$5,000.00, for which let civil execution issue. Provided, that the defendant shall have a period of sixty (60) days from this date in which to pay said fine.

Dated this 8th day of December, 1952.

/s/ EDWARD P. MURPHY,

United States District Judge.

Presented by:

/s/ HARRY SAGER,

Asst. United States Attorney.

[Endorsed]: Filed December 8, 1952.

Entered December 9, 1952.

United States District Court, Western District
of Washington, Northern Division
No. 48,518

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PASKEY DEDOMENICO,

Defendant.

JUDGMENT, SENTENCE AND ORDER
OF PROBATION

On the 5th day of December, 1952, came the attorney for the Government, and the defendant,

Paskey Dedomenico, appearing in person and by his attorney, Robert A. Yothers, the Court finds the following:

That prior to entering his plea, a copy of the indictment was given the defendant, and the defendant entered a plea of not guilty, and a trial was heard to the Court sitting without a jury, the defendant having waived trial by jury, and such waiver being consented to by plaintiff and approved by the Court; and the Court having heard evidence submitted by the plaintiff and the defendant and having heard argument of counsel, now finds:

That the defendant is not guilty of the charge alleged in Count I of the indictment. That the defendant is guilty of the offenses charged in Counts II, III, IV, V and VI of the indictment, to wit: of a violation of Sections 331 and 333, Title 21, U.S.C. (interstate shipment of adulterated food products).

It Is Adjudged that the defendant is guilty as charged in Counts II, III, IV, V and VI of the indictment and is convicted.

It Is Adjudged that the defendant shall pay to the United States of America a fine in the sum of \$5,000.00 and that he shall stand committed until such fine is paid, or until he is otherwise discharged in the manner provided by law. Provided, that the defendant shall have sixty (60) days from the date hereof in which to pay said fine.

The Court being of the opinion that the ends of justice and the best interest of the public as well as the defendant will be subserved by the suspen-

sion of imposition of sentence as to imprisonment of the defendant as to Counts II, III, IV, V and VI.

It Is Adjudged and Ordered that the imposition of sentence as to imprisonment of the defendant is hereby suspended and the defendant is placed on probation for a period of three (3) years commencing this date upon the following conditions:

(1) That he shall report to the United States Probation Officer for this District at the times and in the manner that said officer shall direct.

(2) That he do not violate any law of the United States or of any State or community where he may be.

(3) That he comply with the rules and regulations relating to probation as directed by the Probation Officer and that so long as he shall continue in the food manufacturing business he shall conduct said business in its operations to the satisfaction of said Probation Officer.

Dated this 8th day of December, 1952.

/s/ EDWARD P. MURPHY,
United States District Judge.

Presented by:

/s/ HARRY SAGER,
Asst. United States Attorney.

[Endorsed]: Filed December 8, 1952.

Entered December 9, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEALS

Name and Address of Appellant: Golden Grain Macaroni Company, Inc., 4715 Sixth Avenue South, Seattle, Washington.

Name and Address of Appellant's Attorneys: Pomeroy, Yothers, Luckerath & Dore, 304 Spring Street, Seattle, Washington.

Offense: Violation of Sections 331 and 333 of Title 21, United States Code (interstate shipment of adulterated food products).

Judgment: Entered December 9, 1952, found the appellant guilty as charged on Counts II, III, IV, V and VI of the Indictment, and adjudged that appellant pay to the United States of America a fine in the sum of \$5000.00.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated this 14th day of January, 1953.

/s/ PASKEY DEDOMENICO.

GOLDEN GRAIN MACARONI
COMPANY, INC.,

By PASKEY DEDOMENICO,
President.

Name and Address of Appellant: Paskey Dedomenico, 4715 Sixth Avenue South, Seattle, Washington.

Name and Address of Appellant's Attorneys: Pomeroy, Yothers, Luckcrath & Dore, 304 Spring Street, Seattle, Washington.

Offense: Violation of Sections 331 and 333 of Title 21, United States Code (interstate shipment of adulterated food products).

Judgment: Entered December 9, 1952, found the appellant guilty as charged on Counts II, III, IV, V and VI of the Indictment, and adjudged that appellant pay to the United States of America a fine in the sum of \$5000.00, and placed on probation for a period of three years upon conditions stated in the aforesaid Judgment.

Appellant has sixty days from December 9, 1952, in which to pay said fine or stand committed.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated this 14th day of January, 1953.

/s/ PASKEY DEDOMENICO.

Presented by:

/s/ HOWARD F. FRYE, of
POMEROY, YOTHERS,
LUCKERATH & DORE,
Attorneys for Appellants.

[Endorsed]: Filed January 14, 1953.

[Title of District Court and Cause.]

MOTION FOR STAY OF EXECUTION AND
RELIEF PENDING REVIEW

Comes Now the above-named defendants and each of them in the above-entitled action by and through their attorney, Howard F. Frye, of Pomeroy, Yothers, Luckerath & Dore, and pursuant to Rule 38, Federal Rules of Criminal Procedure, respectfully moves the Court for a stay of execution of judgments entered December 9, 1952, in the above-entitled cause. The following information is furnished:

1. Notice of Appeal was filed January 14, 1953, following entry of Order Denying Motion for New Trial dated January 13, 1953.

2. The defendant, Golden Grain Macaroni Company, Inc., was, by the aforesaid judgment, fined \$5000.00.

3. The defendant, Paskey Dedomenico, was, by the aforesaid judgment, fined \$5000.00 and placed on probation for a period of three years.

4. The defendants are ready and able to meet such terms as the Court may deem proper and more specifically give bond for the payment of the fines and costs.

Dated this 14th day of January, 1953.

/s/ HOWARD F. FRYE, of
POMEROY, YOTHERS,
LUCKERATH & DORE,
Attorneys for Defendants.

[Endorsed]: Filed January 14, 1953.

[Title of District Court and Cause.]

ORDER TO STAY EXECUTION

The above-entitled defendant's Motion for an Order to Stay Execution of the sentence in the above-entitled cause having come on for hearing in the above-entitled court before the Honorable Judge Edward P. Murphy, United States District Judge, presiding, and J. Charles Dennis, appearing for the plaintiff, and Howard F. Frye of the firm Pomeroy, Yothers, Luckcrath & Dore appearing for the defendants, and the court, after hearing argument on said motion and having referred to the files and records herein and being fully advised in the premises, now therefore,

It Is Hereby Ordered that the motion of the defendants be and the same hereby is granted, and the execution of the sentence imposed by the aforesaid judgments herein shall be and the same are hereby stayed.

Done in Open Court this 20th day of January, 1953.

/s/ EDWARD P. MURPHY,
Judge.

Presented and Approved by:

/s/ HOWARD F. FRYE, of
POMEROY, YOTHERS,
LUCKERATH & DORE,
Attorneys for Defendant.

Approved as to Form:

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed January 20, 1953.

[Title of District Court and Cause.]

ORDER REFUNDING CASH BAIL

The above-entitled defendants' motion for an Order Refunding Cash Bail in the above-entitled cause having come on for hearing in the above-entitled court before Judge Edward P. Murphy, United States District Judge, presiding, and it appearing to the court that the defendant Paskey Dedomenico, above named, deposited heretofore in the treasury of this court the sum of Five Hundred (\$500.00) Dollars in cash bail and that said cause was subsequently appealed and new bond posted pending appeal, now therefore,

It Is Hereby Ordered that the cash bail so deposited be and is exonerated and the Clerk of this Court is directed to draw a check on the registry of this Court to Paskey Dedomenico in the sum of Five Hundred (\$500.00) Dollars.

Done in Open Court this 20th day of January, 1953.

/s/ EDWARD P. MURPHY,
Judge.

Approved and Presented by:

/s/ HOWARD F. FRYE.

Approved by:

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed January 20, 1953.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 48,518

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOLDEN GRAIN MACARONI COMPANY,
INC., a Corporation, and PASKEY DEDOM-
ENICO, an Individual,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: The Honorable Edward P. Murphy,
United States District Judge.

December 2, 1952—11:15 A.M.

The Clerk: In the matter of United States of America vs. Golden Grain Macaroni Company, and Paskey Dedomenico, an individual, Cause No. 48518, plaintiff being represented by Mr. Harry Sager, the defendants by Mr. Robert Yothers. Parties are now in court, your Honor.

The Court: Proceed. I understand there is a waiver of a jury trial in this case.

Mr. Yothers: That is correct.

The Court: Do you consent, Mr. Sager?

Mr. Sager: Yes, the Government consents if the Court approves.

The Court: You are representing on behalf of your clients that they consent to the waiver?

Mr. Yothers: That is correct, your Honor; both defendants have signed the waiver.

The Court: Very well. Proceed. [3*]

* * *

Mr. Sager: If your Honor please, one of the allegations of the indictment is that the defendant, Golden Grain Macaroni Company, is a corporation organized under the laws of the State of California and doing business at Seattle, and that the individual defendant, Paskey Dedomenico, is president and general manager of the corporation. I understand that the defendant stipulated as to those facts.

Mr. Yothers: That is correct; the defendants will so stipulate, your Honor. [4]

* * *

ARTHUR G. EDWARDS

being first duly sworn on oath, was called as a witness on behalf of the plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. Your name is what?

A. Arthur G. Edwards.

Q. And where do you live?

A. 2209 Fairview North.

Q. What is your occupation?

A. Paymaster and assistant office manager at West Coast Fast Freight.

Q. What is the business of West Coast Fast Freight?

(Testimony of Arthur G. Edwards.)

A. Motor carrier in inter and intrastate shipments.

Q. In your capacity as assistant office manager, do you have custody of the records of that concern?

A. That is correct.

Q. Have you brought certain of those records here? A. Yes, I have.

The Clerk: Plaintiff's Exhibits 2 and 3 marked for identification.

Q. Mr. Edwards, I am showing you Plaintiff's Identifications 2 and 3. What are the documents?

A. These are bills of lading covering shipments. Used as a shipping document. [18]

Q. Are they original records from your concern?

A. That is correct, they are.

Q. Kept in the usual and ordinary course of business? A. That is correct.

Q. And as a permanent record? A. Yes.

Q. And how do these bills of lading reach your concern? A. You mean in the custody of—

Q. No, how do you get them originally?

A. They were picked up by our pickup driver and brought in with the shipment covering the movement.

Q. Picked up where?

A. At, I would imagine, at the, from the shipper.

Mr. Yothers: I object to this testimony. The man is not qualified to know where the driver—he wasn't with him. It is based on hearsay and I move that the answer be stricken.

(Testimony of Arthur G. Edwards.)

The Court: Motion denied. I assume he is familiar with the general customs and practices of his operations.

Q. Are you? A. Yes.

Q. Does your concern pick up its freight at the business of the shipper? [19]

A. That is correct.

Q. And then how is it handled from there?

A. These documents are brought in with the shipment and presented at the dock for loading outgoing.

Q. Calling your attention to Exhibit 2, it represents a shipment of freight from what point to what point?

A. Shipped from Seattle to Missoula, Montana.

Q. And the date? A. July 16, 1951.

Q. Who is the shipper?

A. Shipper? Golden Grain Macaroni.

Q. And as to Exhibit for Identification 3, what shipment does it represent?

A. Shipped from Golden Grain Macaroni to the General Grocery at Eugene, Oregon.

Q. And the date? A. July 16, 1951.

Q. Now, were the shipments described on these documents actually shipped on those routes?

A. Yes.

Q. And what date would they be shipped on?

A. They would move on the 16th of July.

Q. The date shown on the documents?

A. That is correct.

Mr. Sager: We will offer Exhibits 2 and 3. [20]

(Testimony of Arthur G. Edwards.)

The Court: They will be received and marked.

Mr. Yothers: Mr. Edwards, did you prepare these bills of lading?

The Witness: No, I didn't.

Mr. Yothers: Do you know who did prepare them?

The Witness: No.

Mr. Yothers: Do you know whether or not they were prepared by Mr. Dedomenico or Golden Grain Company?

The Witness: No, I don't.

Mr. Yothers: I object to the introduction of these, your Honor, on the grounds it is hearsay.

The Court: Objection will be overruled. They are bills of lading which are kept in, I assume, the ordinary course of business, and such records are properly admissible. These are your regular forms—what do you call them, bills of lading?

The Witness: Yes, sir.

The Court: They will be received and marked.

(Plaintiff's Exhibits 2 and 3 marked for identification and admitted in evidence over objection.) [21]

Cross-Examination

By Mr. Yothers:

Q. Mr. Edwards, as I understand, you did not prepare these bills of lading?

A. That is correct.

Q. And you don't know who did prepare them?

(Testimony of Arthur G. Edwards.)

A. No.

Q. Even though they are part of your own records and everything? A. That is correct.

Mr. Yothers: For the purpose of the record, your Honor, may I again resume my objection?

The Court: The objection is again [22] overruled.

* * *

EVERETT LEWIS PURDY

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. Your name please?

A. Everett Lewis Purdy.

Q. Where do you live Mr. Purdy?

A. 2841 W 60th.

Q. And in 1951, in July of 1951 by whom were you employed?

A. West Coast Fast Freight Lines.

Q. Is that the same concern that Mr. Edwards has testified about? A. That is correct.

Q. And what were your duties?

A. I was in charge of operation on the triangle, Wenatchee, Spokane and Yakima.

Q. You say you were what? In charge of operations of that run? A. Operations of loading.

Q. Oh, I see. Do you recognize the document which is now Plaintiff's Exhibit 2?

A. Yes, I do.

(Testimony of Everett Lewis Purdy.)

Q. In connection with the shipment represented by that [23] document, do you recall an inspector of the Food and Drug Administration being there?

A. Yes, I do.

Q. And what did he do with respect to that shipment?

A. Well, I know that I had to stop operations of loading this special truck in order that we could dig out the macaroni. It had already been loaded.

Q. And then what was done?

A. Well, he had to go up to the office to get the bill of lading that I had already sent in, and he took a couple of samples. I imagine that is what he done.

Q. Well, did you see him take samples?

A. That is right.

Q. From this shipment represented by that bill of lading?

A. That is right.

Mr. Sager: You may inquire.

Cross-Examination

By Mr. Yothers:

Q. You say you saw him take the samples?

A. Yes, sir.

Q. What did he do when he took the samples?

A. He just opened them up and took the packages and went over to the dog house, and we just stood around and waited. [24]

Q. Over to where?

(Testimony of Everett Lewis Purdy.)

A. Over to—well, it's a little shack on the dock; that is where the bills are segregated.

Q. What did he do with the samples at that time?

A. Well, I don't know what he done then. I didn't watch him.

Q. I see. A. I went on about my work.

Q. After he actually took the samples themselves, you don't know what he did with them?

A. No, I don't know what he done with them.

Q. Were those samples loose?

A. I had to open up the packages.

Q. You opened up the packages?

A. He did.

Q. Did he take out full packages or partial packages, or what?

A. I don't remember that.

Q. Now, when you say he took a sample from the shipment counsel asked you if that was a shipment represented by that bill of lading. How do you know that shipment was represented by that bill of lading?

A. Well, it had to be because I had to check it before it went into the truck.

Q. You did check it? [25]

A. That is right.

Q. How many cases of macaroni were there?

A. Forty-nine (49).

Q. That is what the bill of lading says?

A. That is right.

Q. Did you check it at that time?

(Testimony of Everett Lewis Purdy.)

A. That is right. All freight is checked before it is put into the truck.

Q. What was the destination of it?

A. Missoula, Montana.

Q. And you got that information, did you, from the bill of lading? A. That is right.

Q. You don't know that of your own knowledge outside of the bill of lading itself?

A. How do you mean?

Q. I mean, this information as to where it was going and where it was from, you got that from the bill of lading? A. That is right.

Q. Do you know who prepared the bill of lading?

A. No, I don't know who prepared it. [26]

* * *

WILLIAM PUGH

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name, please.

A. William Pugh.

Q. P-u-g-h? A. Right.

Q. Where do you live, Mr. Pugh?

A. 3904 South 166th.

Q. In Seattle? A. Right.

Q. And by whom were you employed in July of 1951? A. West Coast Fast Freight.

(Testimony of William Pugh.)

Q. And what was the nature of your employment there?

A. I was loading foreman, checker and loading foreman for California and southern Oregon sector.

Q. Showing you plaintiff's Exhibit 3, Mr. Pugh, do you recognize this document? A. Yes, sir.

Q. Did you have anything to do with that document on that date?

A. Yes, I did as I loaded this particular shipment.

Q. In connection with that was there an inspector from [27] the Food and Drug Administration there? A. Yes, there was.

Q. What did he do with respect to that shipment?

A. What I did, the way we handle our freight is on a pallet board with lift truck. I put this pallet to one side so he could inspect this particular shipment before we loaded it.

Q. Did he take samples of the shipment?

A. Yes, sir.

* * *

Cross-Examination

By Mr. Yothers:

Q. What was the date of this, Mr. Pugh?

A. 7/16/51.

Q. July 16, 1951. Do you recall the name of the inspector? A. No, I didn't know his name, no.

Q. Did you observe him when he actually took the samples themselves? A. Yes.

(Testimony of William Pugh.)

Q. Did you observe how he did it, what manner he did it? A. No, I didn't.

Q. Do you know what he did with the samples after he got them? [28] A. No.

Q. The samples that he took, were they in open bags or were they closed bags, or——

A. I don't remember.

Q. You didn't observe that? A. No.

Q. Mr. Pugh I will ask you whether or not, did you have anything to do with the preparation of that Exhibit 3, that bill of lading? A. No.

Q. You don't know who prepared it?

A. No, I don't. [29]

* * *

EDWIN A. GARDNER

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name.

A. Edwin A. Gardner.

Q. Where do you live?

A. 2322-37th S.W., Seattle.

Q. What is your occupation?

A. Manager, Coastwise Line.

Q. Where is your office?

A. Ames Terminal, 3200-26th S.W.

Q. As manager, did you have custody of the records of that concern?

(Testimony of Edwin A. Gardner.)

A. Yes, I do, sir.

Q. And you brought certain of those records here?

A. Yes, I have.

Q. What is the business of that—what is the nature of its business, your concern's business?

A. Operation of steamship service from Seattle to Alaska.

Q. And in that capacity do you handle freight and shipments from Seattle to Alaska?

A. Yes, we do, sir. [30]

Q. May I have the records you brought?

The Clerk: Plaintiff's Exhibit 4 for identification.

Q. Mr. Gardner, showing you plaintiff's identification 4, will you state generally what the exhibit is?

A. Well, this exhibit is a copy of the original bill of lading made out by the shipper in Seattle to Anchorage, Alaska.

Q. And is this exhibit a permanent record of your company?

A. Yes, sir, this copy is a permanent record for our office, the only one we have.

Q. And that is kept in the usual and ordinary course of the business of your company?

A. It is kept according to shipment in the office, yes, sir.

Q. Now, does it—there is a whole series of documents there, of course, does it show a shipment from Seattle to Alaska?

(Testimony of Edwin A. Gardner.)

A. It shows a very large shipment from Seattle.

Q. By boat? A. By boat.

Q. And what is the date of that shipment?

A. The date of that shipment is July 31, 1952.

Q. Does the record, the document show who, where [31] the shippers shipped goods in that shipment?

A. Yes, sir, it does.

Q. And is one of them Golden Grain Macaroni Company?

* * *

A. I want to make the correction, it is 1951. Excuse me.

Q. Do the documents show Golden Grain Macaroni Company to be a shipper?

Mr. Yothers: I object to this testimony, your Honor. The documents speak for themselves and are the best evidence.

The Court: Objection overruled.

A. The Golden Grain Company was a shipper in connection with this particular shipment.

Q. And who was the consignee of the shipment made by Golden Grain Macaroni Company?

A. The consignee was J. B. Gottstein Company, Anchorage, Alaska.

Mr. Sager: We will offer the exhibit.

Mr. Yothers: Mr. Gardner, do you know of your own knowledge that the Golden Grain Macaroni Company prepared that bill of lading or that [32] Mr. Dedomenico prepared that bill of lading?

The Witness: No, I do not.

Mr. Yothers: You don't know who prepared it

(Testimony of Edwin A. Gardner.)

then? It could have been prepared by anybody, is that correct?

The Witness: No, it could have been prepared by either that company or the J. B. Gottstein Co., one or the other.

Mr. Yothers: I see. You don't know whether it is the J. B. Gottstein Company or Mr. Dedomenico or the Golden Grain Company who prepared this bill of lading?

The Witness: No, I do not, sir.

Mr. Yothers: I object to the introduction of the exhibit, your Honor, on the grounds that it has not been properly identified, no foundation laid for its introduction, and further, so far as the defendants herein are concerned, that it is hearsay.

The Court: Objection will be overruled. It goes to the weight of the evidence; indicates the shipment was made. For that purpose it will be received.

(Plaintiff's Exhibit No. 4 marked for identification and admitted in evidence over [33] objection.)

Q. Mr. Gardner, were the goods described in this document actually shipped to Alaska?

A. Yes they were actually shipped to Alaska on that vessel shown on that bill of lading.

Q. Now, where in the document is the portion which shows the part of the shipment made by Golden Grain Macaroni?

Mr. Yothers: I object, your Honor to the form of the question because it is assuming a fact that

(Testimony of Edwin A. Gardner.)

this witness has already testified that he is not qualified to give any testimony on it, that is, he does not know if the shipment was made by the Golden Grain Macaroni Company or J. B. Gottstein. The form of the question assumes that as to fact.

The Court: The objection will be overruled.

A. The Golden Grain Macaroni Company or the J. B. Gottstein Company make up a bill of lading which we call a memo bill of lading. It comes to us to Ames Terminal either by messenger or mail. That is consolidated into a master bill of lading which includes the Golden Grain Macaroni Company shipment as well as many others originating from many other different shippers and then consolidated into one bill of lading to J. B. Gottstein Company, Anchorage, Alaska.

Q. Now then, is there something in the document to [34] show what part of the master bill of lading came from Golden Grain or was shipped by Golden Grain Macaroni Company?

Mr. Yothers: Same objection to this question, your Honor, as previously stated.

The Court: Same ruling.

A. The memo bill of lading shows three (3) items, spaghetti, macaroni and rice shipped by either and made out by either of the two companies mentioned and consolidated into the master bill of lading. We have that record and the signature of the checker receiving that cargo which is, as I stated, consolidated into the master bill of lading.

(Testimony of Edwin A. Gardner.)

Q. Now, you have designated one of these documents which has the shipper as Golden Grain Macaroni Company? A. Yes, sir.

Q. And the product then described in that document is the part of their shipment or the part of the whole shipment which was shipped by Golden Grain Macaroni? A. That is correct, sir.

Mr. Sager: I think possibly for the convenience of the Court it may be well if we identified that particular document as plaintiff's Exhibit 4-A.

Mr. Yothers: Can we extract that from the bill of lading? It might be simpler.

Mr. Sager: I think the whole document [35] should stay together. It is just a matter of—

The Clerk: This document? Plaintiff's Exhibit 4-A for identification.

Mr. Sager: We will offer that. Well, the whole exhibit is in.

The Clerk: Yes it is. We will mark it as 4-A then.

Mr. Sager: Very well.

* * *

(Plaintiff's Exhibit No. 4-A marked for identification and admitted in evidence as a part of Plaintiff's Exhibit No. 4.)

Cross-Examination

By Mr. Yothers:

Q. Mr. Gardner, as I understand your testimony as to Exhibit 4 and as to Exhibit 4-A, that exhibit

(Testimony of Edwin A. Gardner.)

represents a bill of lading which could have been prepared or might have been prepared by either J. B. Gottstein Company or by Golden Grain Macaroni, is that correct?

A. The memo could have been prepared by [36] either.

Q. And it might have been received by you by messenger or by mail, is that right?

A. Yes, sir, that is correct.

Q. Or by telegram?

A. No, by messenger or by mail.

Q. By mail. And you do not know which of the two concerns prepared it, is that correct?

A. That is correct.

Q. Nor do you know at this time in what manner you received it? A. In what manner?

Q. In what manner, whether by messenger or by mail?

A. We received this particular one by messenger.

Q. Now, I think you testified, Mr. Gardner, that this shipment was sent to Alaska, is that correct?

A. That is correct.

Q. By this shipment are you referring now to those matters which are contained in Exhibit 4-A? Is it your testimony that they went to Alaska?

A. 4-A and 4 both.

Q. I am speaking particularly now of the macaroni and spaghetti products referred.

A. Yes, they went to Alaska.

Q. You are certain of that?

A. I am certain of that, sir. [37]

(Testimony of Edwin A. Gardner.)

Q. This J. B. Gottstein Company, do you know of your own knowledge, Mr. Gardner, whether or not it is in any way connected with the Golden Grain Macaroni Company, or do you know?

A. No, I do not know whether they are connected in any way. I doubt very much if they [38] are.

* * *

EDWARD HYATT

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name. A. Edward Hyatt.

Q. What is your address?

A. 6733-46th Avenue S.W.

Q. What is your occupation?

A. Assistant Dock Superintendent at Ames Terminal.

Q. And what are your duties in that capacity?

A. I supervise the receiving and delivering of cargo.

Q. That is the same concern that Mr. Gardner testified about?

A. No, Mr. Gardner works for the Coastwise Line.

Q. Oh, excuse me. Well, does that operate at Ames Terminal?

A. They operate out of the Ames Terminal.

(Testimony of Edward Hyatt.)

Q. Were you present when this cargo was made up and shipped?

A. I was present when the Golden Grain portion was.

Q. The portion of the shipment represented by this document? A. That is right. [39]

Q. On that occasion was there an inspector from the Food and Drug Administration there?

A. There was.

Q. And what did he do with respect to this part of the shipment that was from Golden Grain Macaroni Company?

A. He asked my permission to take samples of this particular shipment.

Q. Did he do so? A. He did.

Q. Do you remember what his name was?

A. No, I don't. [40]

* * *

JAMES A. FORD

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name, please.

A. James A. Ford.

Q. Where do you live?

A. 5220-40th S.W.

Q. What is your occupation?

(Testimony of James A. Ford.)

A. I am inspector with the Food and Drug Administration.

Q. How long have you been employed in that capacity? A. Nearly two years.

Q. Did you have occasion to take a sample of a product involved in one of the shipments in this case? A. Yes, I did.

Q. Which one was it and what is it?

A. Well, it was a shipment to County Fair Market, Missoula, on July 16, 1951.

Q. And where did you take your sample?

A. At West Coast Fast Freight docks. From one of the trailers.

Q. And who from that company was present at the time?

A. Well, Mr. Purdy was present.

Q. Now, did you on that occasion, did you examine the [41] bill of lading.

A. Yes, I did.

Q. With respect to that shipment?

A. Yes, I made copies of it.

Q. You say that was the shipment to Missoula?

A. Yes.

Q. Showing you Plaintiff's Exhibit 2, is that a copy of the bill of lading that you saw at that time?

A. This is the original bill of lading that I copied. It has my initials and date on the back.

Q. Now, did you examine this shipment, this whole shipment to see at least what it was?

(Testimony of James A. Ford.)

A. I examined much of it. I couldn't examine it all because it was loaded on a trailer.

Q. Oh, I see. Generally what was the nature of the shipment?

A. It was macaroni products, macaroni and spaghetti products, and there was five (5) cases of beans in the shipment.

Q. With respect to the macaroni, what was that packaged in?

A. It was packaged in cellophane bags in cardboard containers.

Q. Cartons? A. Yes. [42]

Q. And how did you take the sample?

A. I took twelve (12) packages, took two (2) from each of six (6) different cases.

Q. How many cases of the macaroni were there?

A. Forty-four (44).

Q. Forty-four (44) cases? A. Yes.

Q. And what were the size of the bags?

A. One pound six ounces (1 lb. 6 oz.) were the ones that I sampled.

Q. Was it any particular type or brand of macaroni? A. Elbow macaroni.

Q. Now, what did you do with these bags that you took as a sample?

A. I put them in one of the original shipping containers that I had filled back from the boxes I had taken the other samples from, and took it back to the office, wrote up a collection report, put it under my seal, seal with my name on it and turned it in to our Seattle laboratory.

(Testimony of James A. Ford.)

Q. And do you give that then a sample number?

A. We do.

Q. And what was that? A. 30-340 L. [43]

* * *

Cross-Examination

By Mr. Yothers:

Q. Where did you say you got these samples from, Mr. Ford?

A. Well, from one of the trailers at the West Coast Fast Freight dock.

Q. Did you inspect the trailer? [44]

A. Did I inspect the trailer?

Q. Yes.

A. It was nearly loaded, better than half loaded.

Q. By that you mean you did not inspect the trailer?

A. What do you mean by inspecting the trailer?

Q. Well, did you examine the trailer; did you inspect it?

A. I don't know what you mean. I looked at the trailer, yes.

Q. Did you examine the inside of the trailer. Did you determine from your examination or inspection as to the cleanliness or sanitary condition of the trailer?

A. Yes, the trailer was lined. It was a fairly new trailer and it was entirely lined with a tongue and groove, I think, fir, tongue and groove siding, and it was reasonably clean, yes.

Q. Reasonably clean? A. Yes.

(Testimony of James A. Ford.)

Q. What do you mean by reasonably clean?

A. Well, there is a certain amount of dirt that would track in on the floor from the dock. What I mean, just dirt from the loading dock.

Q. Did you examine the warehouse or the dock or wherever it was they had this product stored?

A. I did not make a detailed examination, [45] no.

Q. At the time you took the samples, this particular sample, Mr. Ford, did you determine whether or not there were any insects in the product? Did you see any visually?

A. No, I could not see any visually.

Q. Did you look at it? A. Yes, I did.

Q. Was it in cellophane bags? A. Yes.

Q. And could you determine whether or not the product was moldy?

A. I did not see any mold.

Q. Was it in any way offensive to odor?

A. I couldn't smell through the cellophane bag.

Q. Or to taste?

A. I didn't taste any of it. I didn't open the cellophane bags at all.

* * *

Redirect Examination

By Mr. Sager:

Q. I presume these bags were sealed?

A. Yes, they were.

Q. Cellophane bags? A. Yes.

Q. How was the carton sealed? [46]

(Testimony of James A. Ford.)

A. The carton was regular double flap glued shut, tight fitting cardboard carton.

Q. These cartons were all closed, were they?

A. Yes, they were.

Q. Until you opened them to take the samples?

A. Yes, then I glued them back after I had taken the samples. [47]

* * *

CHARLES M. CHAMBERS

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name.

A. Charles M. Chambers.

Q. And where do you live?

A. 9123-25th Avenue N.E., Seattle, Washington.

Q. You are employed by whom?

A. United States Food and Drug Administration.

Q. How long have you been with them?

A. Since December 8, 1950.

Q. In what capacity? A. Inspector.

Q. Did you have occasion to take samples from the products involved in the shipments in this case?

A. I did.

Q. What shipments were they? [48]

* * *

(Testimony of Charles M. Chambers.)

Q. Now, did you take a sample from another of these shipments? A. I did.

Q. Which one was that?

A. The shipment on the Ames Terminal dock in Seattle. That was taken on July 26, 1951. [49]

Q. Did you see any of these documents at that time represented by plaintiff's Exhibit 4 in connection with that sample? A. Yes, I did.

* * *

Q. From what part of the shipment represented by that exhibit did you take your samples?

A. I took the part that was being shipped by the Golden Grain Macaroni Company to J. B. Gottstein Company, Anchorage, Alaska.

Q. And what did that shipment consist of?

A. It consisted of macaroni products.

Q. How many cases were there?

A. There were originally twenty (20) cases of elbow macaroni and twenty-five (25) cases of spaghetti.

Q. And did you sample from each?

A. In the twenty (20) case lot of elbow macaroni I sampled from six (6) different cases.

Q. What sample did you take from those?

A. I took two (2) packages from each of the six (6) cases.

Q. This is the elbow macaroni you are talking about?

A. This is the elbow macaroni, that is [50] correct.

(Testimony of Charles M. Chambers.)

Q. What was the size and nature of the packages?

A. They were fourteen ounce (14 oz.) packages. There were twelve (12) of these packages in each case.

Q. What kind of package was it?

A. They were cellophane wrapped packages.

Q. Now, with respect to this spaghetti, how many cases of that were there?

A. Of spaghetti there were twenty-five (25) cases.

Q. What sample did you take from that?

A. From that lot I took twenty-four (24) packages.

Q. And how many cases?

A. There were six (6) cases sampled.

Q. And what was the nature and size of those packages?

A. They were fourteen ounce (14 oz.) packages and there were twenty-four (24) of these in each case.

Q. And what was the nature of the wrapping or package?

A. They were cellophane wrapped packages.

Q. Were they sealed?

A. They were sealed.

Q. All of these that you have been talking about?

A. That is correct.

Q. And how was the carton bound together?

A. The carton was sealed closed.

(Testimony of Charles M. Chambers.)

Q. Now what did you do with the samples that you took [51] from both the Lewiston, Idaho, shipment and this Anchorage shipment?

A. In each case I placed the samples in an original shipping carton, sealed the shipping carton with my sample number and my signature and the date and submitted it to the Seattle laboratory of the United States Food and Drug Administration.

Q. What do you mean by submit?

A. I handed it to the storekeeper of the lab.

Q. What sample numbers did you give these—what did you have, two (2) samples? Then two (2) different samples?

* * *

A. The other two (2) samples taken from Ames Terminal were given the numbers 29-477 L and 29-478 L.

Q. One of those was spaghetti and the other macaroni?

A. Yes. The first number was given the macaroni shipment and the second, the spaghetti shipment.

* * *

Cross-Examination

By Mr. Yothers:

Q. Mr. Chambers, you indicated that these samples that you took were in cellophane wrapped packages. Were you able to observe the contents of the packages therefore?

A. I could see through the wrap and see the product in the package, yes, sir.

(Testimony of Charles M. Chambers.)

Q. Did you observe any mold on the product in either case, any of the three (3) cases?

A. I observed no mold.

Q. Did you observe any insect fragments?

A. I could see no indication of insect fragments.

Q. Was the product in each of the three (3) cases offensive to odor?

A. I could detect no odor.

Q. Was it offensive to taste?

A. I did not taste the product.

Q. As nearly as you could determine, sir, on the basis of your inspection the product did not contain any filth?

Mr. Sager: I object to that.

The Court: Overruled.

A. To my visual examination I could not see filth in the product.

Q. And that same thing is true of the sample that [53] you took down at the Ames Terminal, of the macaroni?

A. That would apply to that shipment also.

Q. And would it also apply to the sample you took down at the Ames Terminal relative to the spaghetti? A. That is correct.

Q. Did you make an inspection of the shipping warehouse or of the shipping facilities at the time you made and took the sample at the Inland Motor Freight?

A. I did not make a complete inspection at that time, no.

(Testimony of Charles M. Chambers.)

Q. You are not able then, therefore, to say the condition as to sanitation or cleanliness of that facility?

A. I can state that the area where the shipments were located in each of the three (3) samples was free of other than extraneous dirt present on the docks.

Q. I see. What do you mean by extraneous dirt?

A. The normal litter present on a dock during the course of a day.

Q. Would you say it was clean, sanitary?

A. It was as sanitary as the docks are usually.

Q. Well, are they sanitary?

A. Yes, for all ordinary purposes.

Q. Are they sanitary for the purposes of shipping foods such as macaroni and spaghetti?

A. Yes, where the product is cased as these shipments were. [54]

Q. And did you make an inspection, sir, of the dock facilities at the Ames Terminal dock and at the warehouse?

A. I did not make a complete inspection of that dock.

Q. That is in both instances, of the macaroni and the spaghetti? A. Yes.

Q. You indicated, Mr. Chambers, that you took a part of the shipment which you said was shipped by Golden Grain to Gottstein of Anchorage. What is your basis for your statement, sir, that that prod-

(Testimony of Charles M. Chambers.)

uct was shipped by Golden Grain to Gottstein of Anchorage?

A. The bill of lading record I obtained from Mr. Hyatt which he identified as covering that shipment; he gave me that information.

Q. You don't know of your own knowledge then that it was shipped by Golden Grain Macaroni to Gottstein?

A. To the best of my knowledge it was.

Q. The basis of that knowledge is what Mr. Hyatt told you and the bill of lading?

A. The bill of lading and Mr. Hyatt.

Q. Do you know who prepared the bill of lading, sir?

A. I do not know that.

Q. Might it have been prepared by the Gottstein Company?

A. I don't know that, sir. [55]

* * *

Redirect Examination

By Mr. Sager:

Q. Is there anything on the shipping cases to indicate from whom they came?

A. Yes, the name Golden Grain Macaroni was stenciled on the cases in each shipment.

Q. As what—

A. I have a portion of that label right here, "Golden Grain Macaroni Products."

Mr. Yothers: I object. I think the best evidence is the label itself.

The Court: Objection sustained.

Q. May I see what you have?

A. Yes, certainly.

(Testimony of Charles M. Chambers.)

Q. From what did you get this?

A. That was obtained from the case that I submitted to the laboratory, one of the original cases from that shipment.

Q. That is a part of the case?

A. That is correct.

The Clerk: Plaintiff's Exhibit 5 for identification, and 6 for identification.

Q. Showing you plaintiff's Exhibit 5 for identification, Mr. Chambers, what is that exhibit?

A. That is a portion of a case of a lot of [56] macaroni, elbow macaroni, which I sampled at Ames Terminal on July 26, 1951.

Q. That is part of the original shipping carton, is that right?

A. Yes, that is correct.

Mr. Sager: We will offer the exhibit.

The Clerk: Plaintiff's Exhibit 7 for identification.

Q. Showing you plaintiff's Exhibits 6 and 7, what are they?

A. These are the cellophane wraps from the packages of the elbow macaroni and—of the elbow macaroni in that shipment.

Q. Are both of the elbow macaroni?

A. The product, yes the product is labeled as elbow macaroni, that is correct.

Q. Both exhibits 6 and 7 are the same?

A. They are both labeled the same.

Q. What I mean, they are both parts of the bags or containers of the product you took as a sample?

A. Yes, that is correct.

(Testimony of Charles M. Chambers.)

Mr. Sager: We will offer 6 and 7. One further question.

Q. Are these from the same shipment as represented by Exhibit 5, the carton? [57]

A. That is correct, yes.

Mr. Yothers: Excuse me, Mr. Chambers, I didn't understand your answer to the question. Are these the bags from which you took the samples?

The Witness: No, those are bags which contained the product that I sampled. I sampled the product when it was in those bags.

Mr. Yothers: I am afraid I don't understand, Mr. Chambers. There was in this one, for example, elbow macaroni and in this one, both of them, elbow macaroni. Then you mean you took the macaroni out of these bags and used them for samples?

The Witness: That is incorrect. I did not. The analyst removed the product in the laboratory. It was——

Mr. Yothers: All right.

The Witness: It was sealed in the original bags and handed to them.

Mr. Yothers: You took these bags to the analyst and he returned the bags to you, is that right?

The Witness: He retained those bags, yes. We kept those in our office.

Mr. Yothers: When did you get them back? [58]

The Witness: I received them yesterday.

The Court: They are offered, is there an objection?

Mr. Yothers: Yes, I object to Exhibits 5, 6 and

(Testimony of Charles M. Chambers.)

7, your Honor, on the ground that they are not properly identified and in no way connected with the defendants in this matter, immaterial.

The Court: Objection will be overruled. They will be received in evidence.

(Plaintiff's Exhibits Nos. 5, 6 and 7 marked for identification and admitted in evidence over objection.) [59]

* * *

KENNETH E. MONFORE

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name.

A. Monfore, Kenneth E.

Q. Where do you live, sir?

A. I live in Bellevue, Washington.

Q. Your occupation?

A. I am Chief of the Seattle District of the Food and Drug Administration.

Q. Mr. Monfore, under the Food and Drug Act there is some provision for citing prospective defendants before criminal charges are filed?

A. That is correct.

Q. In this case did you issue a citation?

A. I did.

Q. Under that provision of the law?

(Testimony of Kenneth E. Monfore.)

A. I did.

Q. To whom did you issue it?

A. I issued a citation or the form is called a notice of hearing to the Golden Grain Macaroni Company, Inc., to Mr. Paskey Dedomenico and to Mr. McDiarmid.

Q. And generally what does the notice [60] require?

Mr. Yothers: I object to this, your Honor. I don't see that it is material.

The Court: I think it is. I am interested in becoming enlightened upon that subject. The objection will be overruled.

A. The nature of that notice is giving an opportunity to persons to whom it is addressed to appear or to respond in writing or through an attorney, as they may desire, at a time specified, to give information which they believe is pertinent to the alleged violation of the Act. The notice contains information regarding shipments which we allege the firm is responsible for and a charge sheet showing the alleged violation of the sections of the Act. It is an opportunity for the ones to whom it is addressed to present the information they desire on a date specified.

Q. And to whom do they present that information?

A. Well, the form gives a place and time. In my case it is the Seattle office of the Food and Drug Administration.

(Testimony of Kenneth E. Monfore.)

Q. Now, when did you give this notice to the defendants and to Mr. McDiarmid?

Mr. Yothers: I object to that, your Honor. I think the best evidence is the notice itself and it should be produced.

The Court: Do you have a copy of the notice, Mr. Monfore? [61]

The Witness: Yes, I have my file copy.

The Court: I assume the original was received by the defendants?

The Witness: That is right.

* * *

Q. (Continuing): Did anybody appear in response to that notice? A. Yes, they did.

Q. Who did?

A. Mr. Paskey Dedomenico and McDiarmid.

Q. And where did they appear?

A. In my office at 501 Federal Office Building here in Seattle.

Q. And who was present besides Mr. Dedomenico and Mr. McDiarmid?

A. I was present and my assistant, Mr. Lofsvold.

Q. Now at that time did you have some conversation with Mr. Dedomenico and Mr. McDiarmid? A. Yes, I did.

Q. During the course of that hearing or conversation was there anything said with respect to Mr. Dedomenico's authority in connection with the company? A. Yes.

Q. What was that?

(Testimony of Kenneth E. Monfore.)

A. Mr. Dedomenico stated that he was president and [62] manager of the Golden Grain Company, Inc., a California corporation, manager of the Seattle plant.

Q. Did anybody appear at this hearing for the corporation? A. Mr. Dedomenico did.

Q. As president? A. That is correct.

Q. Was there anything said during that hearing with respect to who is in charge of the plant in the absence of Mr. Dedomenico?

A. Yes, there was.

Q. What was that?

A. That Mr. McDiarmid who was sales manager of the Seattle plant acted as manager when Mr. Paskey Dedomenico was not present.

* * *

Cross-Examination

By Mr. Yothers:

Q. When was this so-called hearing held, Mr. Monfore? A. January 17, 1952.

Q. 1952, some seven (7) months after the date of the last—taking the last sample?

A. Approximately that.

Q. And you say that was attended by Mr. [63] Dedomenico and who? A. McDiarmid.

Q. Did you at that time have any discussion with Mr. Dedomenico, sir, as to his authorization to appear and act on behalf of the Golden Grain Macaroni Company?

A. In this way, the notice of hearing is addressed to the three that I mentioned, the corporation, to Mr. Paskey Dedomenico as an individual and to Mr.

(Testimony of Kenneth E. Monfore.)

McDiarmid as an individual. At the close of the hearing I asked the specific question of those present, Mr Dedomenico and Mr. McDiarmid, if the response which they had given to me and which I dictated in their presence was the response as to the corporation as well as to themselves as individuals and they stated that it did.

Q. Do you have those minutes present?

A. What?

Q. Do you have the minutes of that hearing?

A. I have my file copy of it.

Q. Do you have it here in the courtroom?

A. I do.

* * *

Q. Was there any resolution passed on behalf of any of the stockholders or the Board of Directors of the corporation authorizing Mr. Dedomenico to appear on behalf [64] of that corporation?

A. I don't know that. I didn't inquire.

Q. Now, what did you ask Mr. Dedomenico as to his being present here in the city of Seattle on June 26th of 1951?

A. I didn't ask him as to whether he was present at that time.

Q. Do you know whether or not he was present or did you have any conversation at this time as to whether he was present?

A. I recall that he made a statement during the hearing that he was absent from Seattle during a period which, as I recall it, was from sometime around the latter part of June until, I believe,

(Testimony of Kenneth E. Monfore.)

around July 25, 1951. That was a part of his response at the hearing.

Q. And what did you ask him that elicited that response, sir?

A. I don't recall that I asked him anything in particular about that.

Q. He just volunteered that information?

A. That is correct.

Q. Did he not at that time advise you that he had instructed all the employees that there were to be no inspections without his personal permission by the inspectors of the Food and Drug Administration. [65]

A. Not at that time.

Q. You don't recall him stating that?

A. No, sir.

Q. Did Mr. McDiarmid advise you of that?

A. No, he didn't.

Q. What was the occasion or what question did you ask of him that brought the response that you testified to that Mr. McDiarmid was in charge when Mr. Dedomenico was not present?

A. Towards the beginning of the hearing I simply inquired of them as to their position. They stated what it was.

Q. And he told you he was the president and general manager of the Golden Grain Macaroni Company here in Seattle?

A. That is correct.

Q. And that Mr. McDiarmid was the sales manager, is that correct?

A. That is correct.

Q. He advised you of the other officers of the

(Testimony of Kenneth E. Monfore.)

corporation or employees of the corporation who are employed here in Seattle?

A. No, he didn't.

Q. Did you have a discussion at that time, Mr. Monfore, as to whether or not there were any standards or tolerances established by the Pure Food and Drug Administration [66] relative to the presence or absence of insect fragments in macaroni products?

A. Any tolerances?

Q. Yes.

A. I don't recall that any discussion was had with reference to tolerances for filth in macaroni products.

Q. You understand the situation, you know Mr. Larrick do you not?

A. George Larrick?

Q. Yes.

A. Yes, I do.

Q. Who is he?

A. He is one of our head officials in Washington, D. C.

Q. He establishes, does he not, matters of policy and passes upon matters of policy of the Pure Food and Drug Administration?

A. He is in the policy-making department. He is not the Commissioner of Food and Drug.

Q. I understand that he is in the policy-making department?

A. That is correct.

Q. In charge of the inspections and supervision divisions, is he not?

A. No, he isn't.

Q. And did not Mr. Dedomenico at that time advise [67] you that he had been advised by Mr. Larrick that a tolerance policy of twenty-five per

(Testimony of Kenneth E. Monfore.)

cent (25%) insect fragments per sample would be acceptable? Were you not informed of that?

A. No, I wasn't.

Q. At the time of this hearing?

A. No, I wasn't.

Q. Did you, at the time of this hearing, Mr. Monfore, note results of the analyses which had been made by your chemists?

A. On the samples involved in this case?

Q. Yes. A. Yes.

Q. And none of those samples contained in excess of twenty-five per cent (25%) insect fragments per sample?

A. I don't recall the figures at the present time. I wouldn't say one way or the other.

Q. Did you, yourself, at that time or as a part of a conference or hearing make an inspection of the plant of the Golden Grain Macaroni Company?

A. No, sir.

Q. You were invited to come down and make an inspection, were you not?

A. I believe Mr. Dedomenico at various times has invited me to come down.

Q. May we have at this time, Mr. Monfore, the minutes [68] of the hearing that you prepared?

A. What I have is my file copy of the record of that hearing which I dictated in their presence.

Q. Was a copy of that given to Mr. Dedomenico?

A. No, it wasn't, I don't believe. Sometimes they are.

(Testimony of Kenneth E. Monfore.)

Mr. Sager: I will offer it as an exhibit, sir.

The Clerk: Plaintiff's Exhibit 8 for identification. [69]

* * *

The Court: Let it be received and marked.

(Plaintiff's Exhibit No. 8 marked for identification and admitted in evidence without objection.)

* * *

Q. Mr. Monfore, these are simply your extracts and resume, are they not, of the conference which you had on that date in February of 1952?

A. That is the verbatim statement which I dictated in their presence as to my understanding of their responses.

Q. It is your understanding of their response, is that what you are getting at?

A. Yes, which I dictated.

Q. And it does not, or does it, purport to contain in there everything that they stated to you?

A. Not in their words, no sir.

Q. Did they—excuse me, strike that. This Exhibit 8 then purporting to be a record of the hearing does not contain any statements that either you or Mr. Lofsvold made to Mr. Dedomenico or Mr. McDiarmid? [70]

A. Any statement which we made?

Q. Yes.

A. No, there might possibly be references to our comments to them in there. That record is supposed

(Testimony of Kenneth E. Monfore.)

to be, and the hearing officer tries to have it, as an understanding of their response to the notice of hearing.

* * *

Redirect Examination

By Mr. Sager:

Q. Mr. Monfore, you say this was dictated in their presence? A. That is correct.

Q. Now then, your last paragraph says, "I asked Mr. Dedomenico and Mr. McDiarmid if the preceding record of hearing as I had dictated it represented a true report of the hearing and they agreed that it did." Was that—did that occur as you stated there, at the end of dictating it to your stenographer?

A. That is part of the dictation, yes, sir. [71]

* * *

LAURA SHOOP

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name. A. Laura Shoop.

Q. Where do you live Mrs. Shoop?

A. 4417-4th Avenue South.

Q. In Seattle? A. Seattle.

Q. Were you at one time employed by the Golden Grain Macaroni Company?

(Testimony of Laura Shoop.)

A. Yes, sir.

Q. During what period of time?

A. Seven years and a half (7½ yrs.) I worked for Mr. Dedomenico.

Q. During what time? When was that?

A. When I started it was May, 1945, until just July this year I retired.

Q. And what sort of work did you do there?

A. Principally cutting and packing spaghetti, bulk packing, cellophane packing.

Q. And where in the factory was that work done? A. What is it? [72]

Q. What part of the factory is that work done?

A. That is in the upper story.

Q. Upper what?

A. Upstairs, manufacturing room.

Q. On the top floor? A. Yes.

Q. What else is done on that floor?

A. Well, a little bit of everything, I guess you might say.

Q. Can you tell what machinery is up there?

A. First they make the noodles up there. They have the automatic machinery, you know, and they make noodles, elbow spaghetti, elbow macaroni, various.

Q. Is that actually the manufacturing part of this plant, that is, on this same floor?

A. Yes, sir.

Q. During the time you worked there did you have occasion to notice the conditions with respect to insects? [73]

(Testimony of Laura Shoop.)

Q. Well, was there any change in the conditions as you observed them during the period of your employment?

A. Well, I think they became a little better. We got to handle it a little different than it was when I first started there; the conditions were cleaner.

Q. Well, can you state what the conditions were during July, June and July of 1951, a year ago?

A. Well, dirt, bugs.

Q. What kind of bugs?

A. Millers, you know, deposit their eggs around different places in the plant.

Q. Did you observe those in the plant?

A. Oh, yes.

Q. Where did you see them?

A. Well, in the dryers, in the tunnels where those——

Q. What do you mean by tunnels?

A. That is where they put their noodles, the trays of noodles in for drying, that is what I call it, tunnels.

Q. I see.

A. And, of course, we found them in the spaghetti dryers, too, quite often. [74]

Q. What sort of a thing is a spaghetti dryer?

A. Well, it is a large room where they have a fan on where they dry with the hot and cold air.

Q. And how is the spaghetti put in there?

A. Like on cars.

Q. I mean, what is it on while it is in the process of drying?

(Testimony of Laura Shoop.)

A. Well, I suppose you would call it hot and cold air. There is a fan in there which they use to circulate the air through it.

Q. But I haven't made my question clear to you, Mrs. Shoop. What sort of a container is the spaghetti in while it is in this room, while it is in the process of being dried? A. They are on cars.

Q. You mean—— A. Three (3) tiers.

Q. Of what?

A. Of the length of the spaghetti. You know, the long spaghetti. Three (3) tiers on cars. Some of the dryers would hold fifteen (15) cars and the others would be twelve (12).

Q. You call them cars?

A. I do. I guess the boys call them maybe trucks. I don't know, but I called them cars when I was working with [75] them.

Q. Is the spaghetti on a car?

A. Yes, drying that way.

Q. Do they hang on—what is it?

A. On sticks, on sticks, the spaghetti is on sticks.

Q. That is what I was trying——

A. Perhaps you wouldn't know if you never seen it done. I don't suppose it would be very——

Q. I am trying to get you——

A. "Experience is the best teacher," they say. You can learn how by experience.

Q. Are any of the products they make there dried in trays? A. Oh, yes.

Q. What sort of trays are they?

(Testimony of Laura Shoop.)

A. Well, the noodles and the elbow spaghetti.

Q. And in what sort? A. Various types.

Q. What sort of tray is used in the drying of that product?

A. Well, I don't know the size of them, but then they are on a wire, lay on a wire——

Q. Screen? A. Screen.

Q. Did you ever observe them with respect to their [76] cleanliness? A. Yes.

Q. What did you observe about them?

A. A great many times they weren't too clean.

Q. Well, what did you observe specifically?

A. Insects.

Q. What type of insects?

A. Moth and millers.

Q. What was done in the plant or on this particular floor with respect to controlling these moths, cleaning it up? A. I beg pardon.

Q. What was done in the way of attempting to control these moths or insects that you observed?

A. Well, they used a spray a great deal in the dryers, but I don't think that is a very thorough method for getting rid of them.

Q. Were they still there after the spraying?

A. Yes, I think so, that is, the moth may have——they may have exterminated him, but I don't think they ever got those little worms down around the edges, you know, the trays and where they put those trays in there, I don't think they were ever thoroughly cleaned. That is one objection——

(Testimony of Laura Shoop.)

The Court: You don't think or do, you [77] know.

The Witness: I know because we seen them.

Q. Who did the cleaning up around the place?

A. Well, just most anyone of us that was available, I guess.

Q. Did you ever do any of the cleaning?

A. Not in that particular part of the work, I didn't.

Q. Well, was there anybody especially assigned to clean?

A. No not—only for a short time.

* * *

Cross-Examination

By Mr. Yothers:

Q. Mrs. Shoop, didn't you receive instructions that you were to keep the place clean while you were working there?

A. Yes, we have those instructions, but who could keep the place clean when they had to do something else all the time?

Q. That was part of your duties, wasn't it?

A. That is what they say, but you can't do two (2) or three (3) jobs at once.

Q. Is that one of the reasons why you were discharged?

A. You have got to clean those tunnels. You have got to get down into them. [78]

Q. Is that one of the reasons why you were discharged? A. I wasn't discharged.

(Testimony of Laura Shoop.)

Q. Is that one of the reasons you quit was because you couldn't keep the place clean?

A. No, I retired. It was not the work. Just got a little too heavy for me.

Q. Outside of these moths that you said—by the way, in June and July of 1951, how many of these moths did you see?

A. Oh, I never tried to count them.

Q. Saw a lot of them, is that right?

A. Yes, a big lot of them.

Q. Thousands of them?

A. You could find them plenty.

Q. Well, were there a lot of them?

A. Yes, sir.

Q. Would you say they were crawling all over the place?

A. Oh, I wouldn't make it that bad, no. There is plenty of them there.

Q. Just how bad was it? Was it just—

A. Nearly everything you turned over you could find some of them.

Q. Did you do that, did you turn them over?

A. I was busy doing other things.

Q. What would you do when you found a [79] moth?

A. We'd kill them.

Q. Did you report the presence of moths?

A. Oh, yes, every once in a while.

Q. Who would you tell?

A. Told Mr. Mulvaney about them once in a while.

Q. Beg pardon?

(Testimony of Laura Shoop.)

A. We'd tell Mr. Mulvaney about it.

Q. You were supposed to tell him about it all the time. What did Mr. Mulvaney do?

A. Well, he is our foreman.

Q. What would he do?

A. He wouldn't do anything as a rule.

Q. He wouldn't? A. No.

Q. Just let it go?

A. Yes. They sprayed. I will say that they sprayed, but that spray doesn't get them. It don't get them.

Q. Have you ever been in any other spaghetti or macaroni plants? A. No, never have.

Q. Well, outside of the moths that you saw, was there anything else that you observed, any other insects? A. No, sir.

Q. That is the only thing?

A. That is the only thing. [80]

Q. Would you say that—you said that the condition was getting a little better. Would you say it was better there in June and July of 1951?

A. Well, I don't—I can't recall it so definitely as all that, but then of course, we made an effort all the time to try to keep them down.

Q. Were you provided with uniforms to work in? A. Yes, sir.

Q. Who provided you with those?

A. Mr. Dedomenico.

Q. They were kept clean weren't they?

A. They were washed once a week, laundered.

(Testimony of Laura Shoop.)

Q. And you were instructed to keep your hands clean? A. Yes, we were.

Q. And not comb your hair out there in the plant or anything like that?

A. We wore nets to keep our hair secure.

Q. Well, Mrs. Shoop, you say you worked there for seven (7) years. Would you say at that time in June and July of 1951 that the plant was unsanitary? A. Oh, yes.

Q. You would say it was unsanitary?

A. Yes.

Q. Why would you say it was unsanitary?

A. Because they weren't as clean as they should have [81] been all the time.

Q. And you base that upon the fact you saw moths there? A. Yes, sir.

Q. Did you at any time during the seven (7) years observe any procedures or methods that he used that would dispose of these moths that you saw?

A. I was telling you, they used a spray. I don't know what it was or what, but they have been using a spray.

Q. Outside of the moths, was the place sanitary?

A. What do you mean by sanitary? It isn't as clean as I'd like to see it kept.

Q. I see.

A. We had lots of grievances as far as cleanliness was concerned, a lot of us.

Q. What instructions did you receive from Mr. Dedomenico or Mr. Mulvaney, either one, as to the

(Testimony of Laura Shoop.)

procedure you should follow if you found a moth?

A. Oh, just kill them. What else can I do?

Q. You weren't instructed to put them into a cellophane bag? A. No.

Q. You didn't get any such instruction at all?

A. No, no.

Q. Did you ever do that?

A. I didn't, no I never did. Fact of the [82] matter, I never handled that sort of product. I never did find anything in the kind of product I handled at all. I never did find them at all, but as I say, it seemed to be more in the smaller stuff, noodles and the girls downstairs handled that. I didn't have anything to do with the handling of that.

Q. Oh, I see.

A. No, occasionally they would put me down there for extra help to help out, but that is all the time I ever did work on the noodles.

Q. You were working down there in June and July of 1951, were you? A. Yes.

Q. Downstairs?

A. Oh, not downstairs, not particularly, no. I say it was just occasionally that they put me down there. I worked mostly upstairs. That is where I worked all the time.

Q. And when you worked upstairs you didn't see these things, is that it?

A. Oh, yes, they were all over, but as I say, they didn't infest the long spaghetti. They did the small stuff. I did bulk packing and I never found any-

(Testimony of Laura Shoop.)

thing like that in the bulk packing, the large twenty pound (20 lb.) stuff.

Q. Did you at any time in June or July of 1951 ever observe any of these moths or any insect fragments in the [83] packages that you were packaging?

A. No, I never had them in what I did, no.

Q. Never anything that——

A. Not in what I did upstairs, cellophane pack.

* * *

The Court: I have a question I'd like to ask you. You volunteered the statement that you had your grievances. What did you mean by that?

The Witness: Well, we just couldn't keep things clean as we would like to. We had our work to do. We were assigned to a certain piece of work and we'd hurry to get that through in our day's work and we couldn't stop that and run and sweep floors and keep the house clean also. I couldn't see where they could tack that onto us.

The Court: Did you ever have any grievances against any of your employers down there?

The Witness: No, sir.

The Court: And when you left the employ of the company did you leave on a friendly basis?

The Witness: Yes, sir. I bid Mr. Dedomenico good-bye. He was very nice. He said if I wanted to come back, to come back, and I thought he was very nice.

The Court: Any prejudice or illwill against [84] these people by whom you were employed?

(Testimony of Laura Shoop.)

The Witness: No, sir. I liked to work there and enjoyed it very much, but I do think that——

The Court: I am not interested in what you think. I am interested in what you know.

The Witness: I know they could be differently handled down there.

* * *

Redirect Examination

By Mr. Sager:

Q. Mrs. Shoop, you said that you spoke to Mr. Mulvaney about finding moths. Did you ever say anything to Mr. Dedomenico about it?

A. Oh, he knows it was all over the place. One time I spoke to Joe about it, Mr. Mulvaney was wheeling out the spaghetti. We had to push those big cars of spaghetti out and my part was to cut them up and pack them, you know. Well, that one special day I pushed one car out and it was just full of those flies there, those moths, I guess you'd call them. I don't know what the name of the things is, and I spoke to Joe about it. I said the dryer should be cleaned out. Well, of course, they are all busy with their ordinary work. [85]

Q. Was it cleaned out on that occasion?

A. No. They are usually full, the dryers are usually full and it takes time to do all that.

Q. Was Mr. Dedomenico around in the manufacturing area?

A. Oh, yes; off and on. I didn't see very much of him.

* * *

(Testimony of Laura Shoop.)

Recross-Examination

By Mr. Yothers:

Q. On this particular occasion you refer to, was that in July of 1951? A. Is what?

Q. When was this particular occasion that you just referred to?

A. About the millers on the cars, that was just a while before I quit work up there.

Q. In 1952? A. Yes.

Mr. Yothers: I move the answer be stricken, your Honor. It is not the time, and furthermore, it is not responsive.

The Court: Let it stay in.

Q. Mrs. Shoop, did you discuss your testimony with anyone? [86]

A. Well, I was interviewed yesterday.

Q. By whom? A. This gentleman here.

Q. Mr. Sager?

A. Well, I don't know this man. At the present time I don't know their names.

Q. Did you discuss your testimony with anyone else at any other time? A. No.

Q. Never saw anyone else before? A. No.

Q. Never saw Mr. Monfore?

A. He was in the room yesterday with this gentleman. [87]

* * *

FRED SHALLIT

being first duly sworn on oath, was called as a witness on behalf of the plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. Your name, sir? A. Fred Shallit.

Q. Where do you reside?

A. 6019 - 38th Avenue N.E., Seattle.

Q. And your occupation?

A. I am inspector with the Food and Drug Administration, Seattle, Washington.

Q. How long have you been in that position?

A. Approximately four and one-half years (4½ years).

Q. Mr. Shallit, did you take some samples from some of the shipments involved in this proceeding?

A. Yes, I did.

Q. Which ones were they?

A. On 7/16/51 I visited the West Coast Fast Freight and I obtained two samples of macaroni products.

Q. At that time did you see the bill of lading or shipping documents?

A. Yes, sir; I did.

Q. Concerning that shipment?

A. Yes. [88]

Q. And the shipment was destined to where?

A. To General Grocery, Eugene, Oregon.

Q. Showing you Plaintiff's Exhibit 3, did you see that bill of lading at that time?

(Testimony of Fred Shallit.)

A. Yes, I did.

Q. And the product described in it, that is the one that you sampled? A. Yes, sir.

Q. What generally did the shipment consist of?

A. There were eight (8) cases of twenty pounds (20 lbs.) each of bulk elbow macaroni, and there were two (2) cases of twenty pounds (20 lbs.) each bulk spaghetti.

Q. And what sort of sample did you take of those two?

A. From the eight (8) cases of twenty pounds (20 lbs.) each, I took approximately two and a half pounds (2½ lbs.) from each of these eight (8) different cases. I—later on I put collection number 28—excuse me, collection number 29-871 L on this sample. On a sample which I later identified as 29-872 L, which consisted of two (2) twenty-pound (20 lbs.) bulk shipping cases, I took approximately three pounds (3 lbs.) from each of the two (2) shipping cases.

Q. You say this was in—was that the same product, elbow macaroni, this—

A. 29-871 L is elbow macaroni and 29-872 L is spaghetti. [89]

Q. How are they packed?

A. These were packed in bulk. They were in cardboard cases and inside the cardboard case after I opened it up was an additional wax paper liner.

Q. And then the product was in bulk in there?

A. Yes, sir.

(Testimony of Fred Shallit.)

Q. What did you do with the samples after you took them from the shipping cases?

A. I took the samples, each sample from the shipping case. I placed each sub, as we designate it, into a clean kraft paper bag. I closed the bag firmly by rolling the top. Placed some of it in an original shipping case which I had, and the others I carried in my arms to my car, which I then took to the Food and Drug office in Seattle, where I work, and then eventually placed these products under my seal which I subsequently submitted to the United States Food and Drug Administration laboratory in Seattle.

Q. And did you—how did you designate them; how did you indicate the sample numbers on the sealed cases that you turned in to the laboratory?

A. On the seal itself, 29-871 L. I put a seal on which stated "29-871 L, 7/16/51," and signed my name, "Fred Shallit." Likewise on 29-872 L I put a similar seal identified "29-872 L, 7/16/51," with my signature, "Fred Shallit."

Q. Now, Mr. Shallit, did you have occasion to make [90] an inspection of the Golden Grain Macaroni Company factory? A. Yes, sir.

Q. And did you make that with anyone else?

A. Yes, sir; on July 18th and 19th, 1951, in company with Inspector Horace A. Allen of our Administration, I made an inspection of the Golden Grain Macaroni Company in Seattle, Washington.

Q. Where is that plant located?

(Testimony of Fred Shallit.)

A. It is, I believe it is about 4700 and Sixth Avenue South.

Q. Generally, what is the plant? Can you describe it to us?

A. It is a two (2) story building with a basement. It is a solid concrete structure. It is a very spacious building with a good deal of light, and a lot of windows. I would say hardwood floors or wood floors for the most part, either wood partitions or concrete or plaster walls throughout.

Q. Now on this occasion when you went there, what time of day did you go there?

A. I arrived at the plant with Inspector Allen on July 16th at approximately eight a.m. (8:00 a.m.).

Q. And what part of the plant did you go?

A. I entered through the main door and went directly into the office, which leads up from some steps from the [91] main door.

Q. And what did you do there?

A. There was a girl in the office. I identified myself as an inspector and showed her my credentials. I asked if Mr. Paskey Dedomenico was in. She said no, he wasn't in; that he was down south. I believe she said California, that he had been gone for approximately two (2) weeks and would be back shortly, within a week or so. I then requested permission to make an inspection. She said that Mr. McDiarmid was in charge of the plant, but that he wasn't in, either, but was expected down very shortly. I asked then who might grant me

(Testimony of Fred Shallit.)

permission to make the inspection. She said she would inquire from Mr. Joe Mulvaney. We waited downstairs and she reappeared a few moments later and told us that Mr. Mulvaney didn't feel that he had authority to grant us permission to make the inspection. She said, though, that Mr. McDiarmid would be down shortly. We thanked her and told her we would return within about a half ($\frac{1}{2}$) hour, which we did. We left the plant and returned approximately a half ($\frac{1}{2}$) hour later.

We entered the plant again the same way. This time she said that Mr. McDiarmid had not arrived yet, but would we kindly wait in a rear office. We went to that office, and within five (5) minutes after the second visit Mr. McDiarmid did appear. [92]

We introduced ourselves again. He seemed to know us. He shook hands with each of us, very friendly. We stated we would like to make a factory inspection. He said, "Go right ahead, boys." I believe those were his words, and he also said that if we needed any help, too, for us to let him know.

Then we went back to our car right after that to obtain our clothing. We ordinarily wear—in this case I wore white coveralls which I had in the car. I also had some other equipment. I returned to my car, and then I went upstairs in the men's dressing room and changed into my white coveralls. From there—I was with Inspector Allen all this time, of course. Then from there I proceeded

(Testimony of Fred Shallit.)

into the plant proper on the second floor and I began my inspection.

* * *

Q. Showing you Plaintiff's Exhibit 9 for identification, Mr. Shallit, what is that exhibit?

A. This for the most part is a sketch, a general sketch of the layout of the top floor of the Golden Grain Macaroni Company at the time of my inspection on 7/18/51.

Q. Was that prepared under your direction?

A. Yes, sir. [93]

Mr. Yothers: If it please the Court, at this time I propose an objection to the witness testifying any further as to the results of his examination or as to any of the samples that he took or as to any of the exhibits he prepared as the result of the examination and inspection that they conducted on the date and time and place indicated. The objection is based upon the statute itself and upon two (2) cases, your Honor. [94]

* * *

The Court: You say McDiarmid was the sales manager?

Mr. Yothers: Yes, sir.

The Court: Wasn't he the ranking man in charge of the plant?

Mr. Yothers: He was the ranking man. He was not in charge of the plant, your Honor. There is no testimony that he was. [111]

* * *

(Testimony of Fred Shallit.)

The Court: What is McDiarmid's official [112] position with the company?

Mr. Yothers: He is the sales manager, your Honor. Mr. Mulvaney is foreman in production.

The Court: I am prepared to rule. I hold Mr. McDiarmid was the custodian and the permission was properly granted and the inspectors were within their rights. The objection will be overruled. Proceed.

* * *

Q. I think, Mr. Shallit, you had just testified that Plaintiff's Identification 9 was a sketch or plan of the top floor made under your supervision.

A. That is an approximate plan; yes, sir.

Mr. Sager: We will offer the exhibit.

Mr. Yothers: Is this drawn to scale, Mr. Shallit?

The Witness: That is only an approximate sketch.

Mr. Yothers: Roughly, what is the scale used?

The Witness: The building itself is approximately ninety-five feet (95 ft.) by a hundred and five feet (105 ft.) and, as I say, that would [113] be your approximate size for your other dimensions.

Mr. Yothers: Subject to the objection noted as to the testimony of the witness, your Honor, relative to receiving permission, we have no objection to this.

The Court: Very well.

(Plaintiff's Exhibit No. 9 marked for identification and admitted in evidence.)

(Testimony of Fred Shallit.)

Q. Mr. Shallit, Exhibit No. 9 represents a top floor. What part of the operations of this factory are carried on on the top floor?

A. In the southwest area is what I would term the principal part of the flour conveying system. It is to handle flour which eventually will be taken toward the east into the main manufacturing area.

In the extreme east or upper right-hand corner are two (2)—

Q. Let me interrupt. Where is north? North is the top?

A. North is to my left, south is to my right, and east and west (indicating).

Q. Okey, now go ahead.

A. I might further add, in this area—this is a five-foot (5 ft.), approximately five-foot (5 ft.) elevated platform—there is a wall that, as you see, does not go entirely through [114] the building, but does extend to the ceiling that separates the partial west end from the partial east end.

On this platform is conducted the noodle manufacturing part of the operations. The alimentary paste then is dried both on continuous drying machines, which are represented by these two (2) oblongs, and in various drying rooms in the east and the west section of the top floor (indicating).

Also in the vicinity of the flour conveying system is a macaroni grinder, which I have been told is used to grind alimentary paste.

Q. That is indicated there on the platform?

A. Yes, sir; by this little oblong.

(Testimony of Fred Shallit.)

Q. Now, Mr. Shallit, what did you—first, what part of the plant or operating machinery did you first inspect in the course of this inspection?

A. I began my inspection in the southwest section of the main plant, which is the lower right-hand area of this drawing, and I began an inspection of what I term the flour conveying system or the flour handling system.

If I might go into a little more detail as to what this consists of?

Q. All right.

A. It consists first of a hopper into which flour is dumped. Then there is a screw conveyor directly to the [115] east of that hopper and actually a part of it which conveys the flour from the hopper to an elevator.

Now this elevator actually comes up in the air. That elevator then will take the flour through, up to another screw conveyor upon which is a coarse sifter, and then by means of an overhead screw conveyor dumps this flour into the flour storage bin.

Now, this bin is approximately eight feet (8 ft.) high and maybe six feet (6 ft.) long and perhaps four or five feet (4 ft. or 5 ft.) wide, the purpose of which is to store the flour.

Q. That is the process from the original sacks until the flour is emptied into the bin?

A. That is right. In other words, it goes from the hopper eventually into this large flour storage bin.

Now, to convey the flour from the storage bin to

(Testimony of Fred Shallit.)

the manufacturing area which is towards the east, there is also another bucket elevator which carries the flour up practically to the ceiling, where there is an overhead conveyor. This overhead conveyor then conveys by a screw arrangement to what is known as a scale hopper and, as I understand, that scale hopper weighs out set amounts of the flour or semolina which may be used in the manufacturing process.

Q. You mention semolina. What is [116] semolina?

A. Well, semolina actually is a coarser material. It is of yellowish appearance. It is, I believe, called the heart or endosperm of a particular type of wheat.

Q. Well, is it a wheat product?

A. Yes, sir.

Q. Used in the manufacture of what?

A. Of alimentary paste for macaroni and spaghetti.

Q. You will have to tell what alimentary paste is.

A. I refer to alimentary paste as macaroni, spaghetti and noodle products or similar such products.

Q. Have you completed your general outline of that conveyor system?

A. Yes, sir; I think I have.

Q. Now, what part of that did you first examine?

A. I began my examination of this hopper,

(Testimony of Fred Shallit.)

which has a wooden cover on it. For purposes of illustration I requested the person who drew this to make these lines to indicate the cover of the hopper. Now, on this cover I noted one dead moth.

I next examined the hopper, which just prior to my inspection was having semolina dumped into it, but upon my request of Mr. Mulvaney he very courteously allowed me to make my inspection and stopped his operations in order that he might assist me.

Q. Well, now, was this flour conveying system in [117] operation when you started your inspection?

A. The hopper part of it was in operation.

Q. Was the plant generally in operation at the time?

A. There was some operation. Whether this part was in operation, I could not say.

Q. What part are you referring to?

A. The overhead conveyor system and scale hopper, that is. Whether or not flour was being taken from the main storage flour bin, I could not tell in the short time I had begun my inspection. However, I did observe that there were manufacturing operations by the five-foot (5 ft.) conveyor—by the five-foot (5 ft.) elevated platform later on in my inspection.

Q. All right.

A. The operations of dumping the flour, the semolina into the hopper, were terminated while

(Testimony of Fred Shallit.)

we began our inspection, and I was with Inspector Allen all this time, although I may say "I."

Inside this hopper I saw two (2) live moths directly in the flour. I also saw insect webbing and live larvae inside of this flour that was in the hopper. I next——

Q. What is insect webbing?

A. This insect webbing is the material which the larvae spins or gives off in its life's cycle.

Q. All right. [118]

A. My next inspection was of the approximately five-foot (5 ft.) screw conveyor which is attached to this hopper and practically on the ground floor. Now, covering this five-foot (5 ft.) screw conveyor is a wood housing, the top of which was very readily removed. I removed the wood plates which were on this screw conveyor and began an examination of the contents of it.

In the south section of the screw conveyor inside with the flour, I counted eleven (11) live moths. I counted four (4) live moths in the north end of this conveyor. I estimated by a partial count that there were approximately fifty (50) pupa surrounding the screw conveyor and inside the housing.

I also noted live larvae and insect webbing both on the housing and in contact with the flour in the screw conveyor.

Q. Did you take pictures while you were making this inspection?

A. I didn't take pictures, sir. I observed Inspector Allen take pictures.

(Testimony of Fred Shallit.)

Q. Was a picture taken of this conveyor?

A. Yes, sir.

Q. Showing you Plaintiff's Identification 11, is that a picture of—taken at that time?

A. This is a picture of the five-foot (5 ft.) [119] screw conveyor with the wooden covers removed by myself.

Q. And what is above, just above that conveyor there?

A. The hopper which I referred to with its wooden cover attached can be seen directly above this screw conveyor.

Q. From the position from which the picture was taken you are looking at the back of the hopper?

A. Yes, sir; this picture would be taken with Inspector Allen standing here and photographing towards the west (indicating).

Q. That photograph is a fair and accurate representation of what you saw at that time?

A. Yes.

Q. Of what it purports to show?

A. Yes, sir.

Mr. Sager: We will offer the exhibit.

* * *

Mr. Yothers: I haven't seen it. (Whereupon, he examined proposed Exhibit 11.) Subject to the objection noted as to the testimony of this witness, your Honor, I have no objection to it.

The Court: Very well; let it be received.

(Plaintiff's Exhibit No. 11 marked for identification and admitted in evidence.)

(Testimony of Fred Shallit.)

Q. All right. Where did you go from there, then, [120] Mr. Shallit?

A. I next examined the elevator which conveys the flour from the screw conveyor up in a horizontal position.

Now, there is also housing on this elevator, the front of which was readily removed. By taking off that housing I was able to count fifteen (15) live moths in the general area in the housing among the buckets and also I observed insect webbing and live larvae.

Q. Showing you Plaintiff's Identification 12, is that a photograph that was taken at that time?

A. Yes, sir.

Q. And that shows this elevator you are speaking about?

A. Yes, sir.

Q. Is it a fair and accurate representation of it?

A. Yes, sir.

Mr. Sager: I will offer that exhibit.

Mr. Yothers: Subject to the same objection, your Honor, as to the testimony of this witness, we have no objection to the photograph.

The Court: Let it be received.

(Plaintiff's Exhibit No. 12 marked for identification and admitted in evidence.)

Q. What sort of elevators were these?

A. These would be called bucket conveyors.

Q. I show you Plaintiff's Identification 13. [121] Is that a picture of one of them?

A. Well, I believe that is the upside of it, sir,

(Testimony of Fred Shallit.)

in that that would be the east section of this elevator as it goes around the corner.

Q. Well, is that a part—

A. Part of the elevator, sir, but this section here—I was talking about this panel being removed and looking into that area.

Q. This is the down part?

A. That is the down side.

Q. In other words, the buckets go up on this side and down here (indicating)? A. Right.

Q. The picture there is taken from this section going up? A. Going up.

Q. All right. That illustrates the type of carrier it is, elevator? A. Yes, sir.

Mr. Sager: We will offer that exhibit. That is No. 13.

* * *

Mr. Yothers: One question relative to Exhibit 13. Does this indicate the condition of the scoop in the elevator, this photograph? [122]

The Witness: This photograph, sir, you would like me to say what I observed, what I observed?

Mr. Yothers: What does the photograph represent?

The Witness: This photograph represents two (2) live moths that I observed among the other live moths which may be seen here in the inside housing of the elevator.

Mr. Yothers: Those two (2) live moths are the two (2) dark approximately quarter-inch ($\frac{1}{4}$ "

(Testimony of Fred Shallit.)

long objects on the right-hand corner of the housing; is that it?

The Witness: I think they'd be one-half to three-quarters of an inch ($1\frac{1}{2}$ " to $\frac{3}{4}$ "); yes, sir.

Mr. Yothers: Subject to the same objection, your Honor, we have no objection to that.

The Court: It will be received.

(Plaintiff's Exhibit No. 13 marked for identification and admitted in evidence.)

Q. All right. Continue with what you——

A. I next examined on this same bucket elevator the boot section of it. Now, the boot I refer to is the very bottom part of the elevator and there is what we call a sliding port door which can be raised to expose what is [123] the dormant stock in the elevator.

Now, I observed Inspector Allen working with him, take out approximately ten pounds (10 lbs.) of this static stock and put it through a twenty (20) mesh screen. We then took the material which remained in the twenty (20) mesh screen and which was insect webbing with larvae in it, and we took that as a sample.

Q. That was taken from what you call the boot or the bottom of this elevator?

A. Right, sir.

Q. All right. What did you do next?

A. I next removed the head of this elevator, which cannot be seen in this picture in that it comes out to a distance of approximately twelve

(Testimony of Fred Shallit.)

feet (12 ft.), and upon removing the head I observed approximately fifteen (15) live moths and larvae and insect webbing in this head.

Q. Was there a picture taken of that?

A. I don't believe so, sir.

I then began an examination of the east end of this same bucket elevator in the same manner as I examined the west end by removing the front paneling and observed, after the front paneling was removed, that there were, I counted sixteen (16) live moths, insect webbing and larvae, and that completed my inspection of the elevator proper.

Q. All right, where did you go from [124] there?

A. I then continued my inspection of the flour handling equipment and I inspected—I might explain just a little bit as far as this overhead conveyor is concerned, which leads from the elevator that I have just been talking about.

There is a short screw conveyor between the elevator head and the coarse sifter. This is also housed in a wooden structure approximately ten or twelve inches (10" or 12") square.

Q. Is that shown in this picture, Plaintiff's Exhibit 12?

A. Yes, sir; it would be. Between the conveyor system and the coarse sifter is the area which is also a screw conveyor which I am referring to.

Q. Is that that short horizontal portion there that you are pointing at?

A. Yes, sir.

Q. All right. What did you find there?

(Testimony of Fred Shallit.)

A. I removed the plate cover from this section of the conveyor and I found two (2) live moths adhering to the cover. There was also adhering to the cover nine (9) larvae and insect webbing.

I noted directly in the screw conveyor in contact with the flour one (1) live moth and insect webbing.

Q. Did you take a picture of that? [125]

A. I didn't take any pictures, sir, but I saw Inspector Allen take a picture of that.

Q. And plaintiff's Exhibit 14 for identification, is that a picture taken of that cover that you say you removed?

A. Yes, sir, this picture was taken standing in the south section on top of this flour storage bin looking towards the north.

Q. Is that a fair representation of what you saw?

A. Yes, sir, it shows the live moths which I observed. It is difficult to distinguish the webbing. It shows what appears to be larvae which I observed and which I counted and found that there were nine (9).

Mr. Sager: We will offer Exhibit 14.

Q. All right, from there where did you go?

A. I then examined the coarse sifter. If I may explain generally the purpose of a coarse sifter. It is to remove the coarser materials like paper or string that might fall into the conveyor system, and in order that it may not be incorporated with the product, there is a throwout area in this sifter which will throw out that material.

(Testimony of Fred Shallit.)

Q. Is that sifter shown in any of these pictures that are here?

A. This is the sifter, sir (indicating a picture).

Q. Oh, I see. [126]

A. There is an end plate which cannot be seen in this picture which can be removed, can be lifted up. And I lifted up that end plate with Inspector Allen and I saw insect webbing and larvae in the throwout of that sifter.

Q. All right.

A. I next made an examination of the main flour storage bin. Now, it is not shown in this diagram I see, but in the area at which I am pointing, which is towards the east side of the flour storage bin, is a small trapdoor approximately two or two and one-half feet (2 ft. or 2½ ft.) square. I opened that trapdoor and with the aid of a flashlight—

Q. Is that trapdoor in the storage bin?

A. That is.

Q. It opens into the storage bin?

A. No, it opens out from the storage bin.

Q. Do you have a picture of that storage bin?

A. We have it, but it is hidden by the overhead system.

Q. But does the storage bin show in that picture?

A. Excuse me, the storage bin is this large rectangular object.

Q. What exhibit is that you are referring to now? A. I am referring to Exhibit 12.

Q. All right, go ahead. [127]

(Testimony of Fred Shallit.)

A. I looked into the flour storage bin through the trapdoor and I counted six (6) moths flying inside the flour storage bin. I also noted directly in contact with the flour I was able to count with my flashlight fifteen (15) other moths which by their position appeared to me to be alive.

Q. They were in the flour?

A. They were directly resting on the flour itself. I might further explain, the flour storage bin was almost empty. There was some flour on the bottom and in a screw conveyor which also rests on the bottom of this flour storage bin, and the flour, most of it, was piled up in the south area of the flour storage bin. I noted my moths in the south area, those that were resting on the flour.

Q. All right. Where did you next go?

A. I obtained a ladder in the plant and I descended into the flour storage bin in order to make a more complete examination of my visual observations with a flashlight, and while in this flour storage bin I saw insect webbing in the bin adhering particularly to the top or the inside roof.

I also obtained samples of the flour and I obtained some insect filth samples. That completed my inspection of the flour storage bin after which I ascended the ladder and continued with my inspection. [128]

Q. Where did you go from there?

A. Just before I began a further examination of the flour conveying system, I noted that on a wall which is directly to the east of the flour storage bin

(Testimony of Fred Shallit.)

and is within a few feet of the main flour storage bin in an area of approximately twenty-five to thirty-five square feet (25 sq. ft. to 35 sq. ft.), that there was a mass of pupae. I made an estimate with a partial count that there were probably approximately four hundred (400) pupae.

Q. What do you mean; what are the pupae?

A. Pupa is part, is one of the life cycles through which the Mediterranean flour moth goes through just prior to the moth emerging. If I may explain a little farther, the eggs are laid. From the eggs are hatched the larvae or worms. The larvae or worms spin a cocoon or a pupate, as it is more commonly known, and eventually from the pupa the moth emerges.

Q. Well then, pupa is, as you use it, is synonymous with cocoon?

A. It is used synonymously by many people, sir.

Q. What I am trying to get at, these four hundred (400) pupae you say you estimated on the wall, were that many cocoons there?

A. They could be referred to as cocoons, yes, sir.

Q. Was a picture taken of that? [129]

A. Yes, sir.

Q. Plaintiff's Exhibit 15 for identification, is that a picture? A. Yes, sir.

Q. Is that a fair representation of what you saw?

A. In this picture it is very difficult to see what we saw much more clearly than that when I was

(Testimony of Fred Shallit.)

with Inspector Allen the area to manipulate the camera is very close and this material does not show up as well as it did to my observation.

Q. It is observable on the wall?

A. Yes, sir.

Mr. Sager: We will offer the exhibit. Apparently no ruling yet on Exhibit 14, your Honor.

The Court: It will be received subject to the same reservation counsel has made.

(Plaintiff's Exhibit No. 14 marked for identification and admitted in evidence.)

Mr. Sager: I will offer 15.

Q. Which was up on Exhibit 15?

A. You are holding that in the correct position for up.

Q. What is this white object?

A. That is part of the flour storage bin or conveyor system which we were talking about. [130]

Mr. Yothers: Subject to the same reservation, your Honor, no objection.

The Court: Let it be received.

(Plaintiff's Exhibit No. 15 marked for identification and admitted in evidence.)

* * *

Q. From there where did you go, Mr. Shallit?

A. I continued with my inspection of the flour conveying system and made an inspection of the elevator which is in the south portion of the flour storage bin, and the purpose of which is to convey

(Testimony of Fred Shallit.)

flour out of the flour storage bin. I removed the front housing in a manner similar to that which I removed the housing from the elevator previously referred to, and I observed six (6) live moths in this system and I estimated approximately fifty (50) larvae were inside this flour elevator.

I then removed the head of this elevator which is the top portion, and I observed that there were three (3) live moths and three (3) live larvae in the area of the head of the elevator.

I next began an examination of the overhead conveyor. Now this diagram shows it to be a little longer than it actually is. We examined the west section of this [131] overhead conveyor. It goes through the wall.

Q. Does the picture show it?

A. Yes, sir, it is shown in the upper right-hand portion of this picture.

Q. That is exhibit what?

A. Exhibit 12.

Q. All right. That elevator goes through that wall?

A. Yes, sir.

Q. Go ahead.

A. By removing the housing which is on the west end of this overhead conveyor I saw larvae and insect webbing. I then proceeded to the east section. In other words, on the east side of this wall to which I referred, in order to continue with my inspection of this overhead conveyor by removing the housing in a manner similar to that de-

(Testimony of Fred Shallit.)

scribed. I also observed insect webbing and larvae in this screw conveyor.

Q. Now, showing you plaintiff's identification 16, that is a picture taken at that time?

A. Yes, this is a picture of it from the east side of this wall and shows the continuation of the overhead conveyor.

Q. And referring to plaintiff's Exhibit 12, is the overhead conveyor in 16 a continuation of that which is against and goes through the wall in [132] 12? A. Yes, it is.

Q. What did you find in that conveyor?

A. I found larvae and insect webbing in this conveyor.

Q. Okey, go ahead.

A. I next examined the scale hopper, the purpose of which, I understand, is to place certain amounts of weighed flour or semolina in a position to be properly manufactured.

Q. Is that shown in plaintiff's Exhibit 16?

A. Yes, sir, that funnel-shaped object is the scale hopper.

Mr. Sager: We will offer Exhibit 16, your Honor.

Q. You may go ahead.

A. I examined the scale hopper which consists of a cloth material on the bellow-shaped portion, which is attached with a hook, with a wire hoop, I should properly say. On the outside of the cloth I found three (3) live moths. I removed the cloth by removing the hoop and I found two (2) larvae

(Testimony of Fred Shallit.)

and insect webbing on the inside of this scale hopper. And that completed my inspection of the flour conveying system.

Q. All right.

A. I, of course, examined other—

Q. I will get to that in a moment. [133]

Mr. Yothers: A question or two about this Exhibit 16, Mr. Shallit. Is this your picture here taken at the time you were inspecting it, or who is it?

The Witness: That was a picture taken by Inspector Allen when he and I—

Mr. Yothers: Is this you up here, or is that an employee of the plant?

The Witness: That is a picture of myself, sir, yes.

Mr. Yothers: No objection, with the same reservation, your Honor.

* * *

(Plaintiff's Exhibit No. 16 marked for identification and admitted in evidence.)

Q. Where did you next go in the course of your inspection?

A. I then began an inspection of the noodle manufacturing equipment. This generally is conducted on this five-foot (5 ft.) elevated platform shown on the diagram. There I saw a dough kneader, which is a large cylindrical piece of equipment, the purpose of which is to soften or knead the dough.

The Clerk: No. 17 for identification.

(Testimony of Fred Shallit.)

Q. Showing you plaintiff's identification [134] 17, is that a picture of the dough kneader?

A. Yes, sir.

Q. Taken at that time? A. Yes, sir.

Q. Does that fairly represent it?

A. It does.

Mr. Yothers: What is that again?

Mr. Sager: 17.

Mr. Yothers: What is it?

The Witness: I called it a dough kneader.

Mr. Sager: We offer the exhibit.

Mr. Yothers: Subject to the same reservation.

The Court: Very well, let it be received.

(Plaintiff's Exhibit No. 17 marked for identification and admitted in evidence.)

Q. What examination did you make of this dough kneader, Mr. Shallit?

A. This dough kneader was empty except for the fact that it had been greased. Adhering to the grease on the bottom of this dough kneader I counted ten (10) dead moths.

I then examined two (2) small tables approximately two feet (2 ft.) square at the top. They are not shown in this diagram, but they would be approximately to the southeast of the dough kneader. There were on each of these two (2) small tables was a cloth sack thrown over it. [135] I found one (1) larva in each of the cloths I examined. I found insect webbing in each of the cloths examined, and I found one (1) live larva

(Testimony of Fred Shallit.)

each in a crack in each of the tables and insect webbing in each of these tables.

Q. And what were these tables used for?

A. Mr. Mulvaney explained to me that as the dough is removed——

Mr. Yothers: Object to that, your Honor, testimony about Mr. Mulvaney, what was said to him not in the presence of defendant. Admittedly he was not there.

The Court: Objection sustained.

Mr. Sager: It would be admissible against the corporation defendant.

The Court: On the grounds that he is an employee?

Mr. Sager: That he represents the corporation, speaking for it.

The Court: There is some testimony that he subsequently came and gave his permission in addition to that already given by McDiarmid, so I will allow it upon that theory.

Q. You may continue.

A. The dough as it is removed from the kneader is placed on these tables for further [136] manipulation.

Q. Then where did you go?

A. I noted before I made any further examination of the noodle manufacturing equipment that there were twenty (20) sacks over a railing. This five-foot (5 ft.) elevated platform has a small wooden railing coming up from it and over, draped over this railing, in the eastern section of it, as I

(Testimony of Fred Shallit.)

recollect, were twenty (20) sacks. I examined four (4) of these sacks and found——

Q. What sort of sacks were they?

A. They were flour sacks, typical sack which is used to contain flour. They appeared to me to be similar to the same type of sack that was thrown over the two (2) small tables which I mentioned. I examined four (4) of these sacks and found larvae on all of them. I took one sack and carefully counted the number of larvae which I could observe and I counted twenty (20) larvae on this sack.

I then proceeded to the southwest section of this same raised platform and examined what is termed an enrichment tank. This tank is used to dissolve the enrichment tablets which are subsequently used in the manufacture of the products. This tank——

Q. That would be vitamins and that sort of thing?

A. Vitamins, yes, sir. This tank contained about four inches (4") of what appeared to be water and a yellowish material mixed in with it. At the bottom of this tank I [137] counted four (4) dead moths.

Q. In the liquid that was in it?

A. It was in the liquid, sir, yes.

Q. And was a picture taken of that?

A. Yes, sir.

Q. Plaintiff's Exhibit 18 for identification, is that the picture that was taken of that tank and its contents?

A. That is correct.

Q. Does it fairly represent it?

A. It does.

(Testimony of Fred Shallit.)

Mr. Sager: We will offer the exhibit.

Mr. Yothers: Referring to Plaintiff's Exhibit 18, Mr. Shallit, can you clarify this for us. Are these one (1), two (2), three (3), four (4), are they the four (4) moths you refer to?

The Witness: Yes, sir.

Mr. Yothers: Subject to the same objection, your Honor.

The Court: Let it be received.

(Plaintiff's Exhibit No. 18 marked for identification and admitted in evidence.)

Q. All right, where did you next go, Mr. Shallit?

A. I next noted that directly to the north of this enrichment tank and approximately four or five feet (4 ft. or 5 ft.) from it was a paper bag such as is used to contain [138] flour. It now contained string and paper and similar debris. I saw on the outside of this paper bag six (6) live moths.

That completed my inspection of the noodle making equipment. From there I proceeded to descend from this platform and I went back to the south-west section which is shown in the lower right-hand corner of this diagram. I observed a macaroni grinder. I opened a plate on the macaroni grinder and I observed that there was a considerable amount of insect webbing and larvae entangled in the insect webbing.

Q. Was a picture taken of that?

A. Yes, sir.

(Testimony of Fred Shallit.)

Q. Showing you plaintiff's identification 19, is that the picture that was taken?

A. That is the picture.

Q. And does it accurately represent what it purports to show? A. It does.

Mr. Sager: We will offer Exhibit 19.

Mr. Yothers: Will you point out in this exhibit, Mr. Shallit, the insect webbing that you refer to?

The Witness: Yes, sir, this is insect webbing which has flour adhering also to it.

Mr. Yothers: Kind of loose like icicles [139] or frosting or something like that, is that it?

The Witness: This specific part of it is, sir, and this is and this is (indicating). This other material is flour (indicating).

Mr. Yothers: This is flour?

The Witness: Principally flour.

Mr. Yothers: Subject to the same objection.

The Court: Very well, it will be received.

(Plaintiff's Exhibit No. 19 marked for identification and admitted in evidence.) [140]

* * *

COLLEEN DICECCO

being first duly sworn on oath was called as a witness on behalf of the plaintiff and testified as follows:

Direct Examination

By Mr. Dickerman:

Q. State your name. A. Colleen Dicecco.

Q. Where do you live, Mrs. Dicecco?

(Testimony of Colleen Dicecco.)

A. 1133 Perkins Way.

Q. In Seattle? A. Yes.

* * *

Q. Were you employed by the Golden Grain Macaroni Company? A. Yes.

Q. During what period of time did you work there?

A. From April until around the end of June or the beginning of July.

Q. Of what year? A. 1951.

Q. And what were your duties while you were there?

A. We had to pack macaroni and the macaroni and spaghetti that fell on the floor we had to pick up and put back into the machine and pack that too. [141]

* * *

FRED SHALLIT

having been previously sworn resumed the witness chair on behalf of the Plaintiff and continued testifying as follows:

Direct Examination

(Continued)

By Mr. Sager:

Q. Mr. Shallit, what did you examine after you had examined this macaroni grinder? Had you finished with your testimony regarding your inspection of the macaroni grinder?

A. Yes, sir.

(Testimony of Fred Shallit.)

Q. All right, where did you go next?

A. I then began an examination of the drying equipment and if I may illustrate again, the drying equipment consists of two (2) vertical continuous driers which are shown in the southeast section, a series of drying rooms on the east section and on the west section of the second floor.

I looked through the front of the drier which is on the—to the north and—the front of the drier is actually on the west side—and I saw insect webbing in the belting.

I lifted the window and observed that it was definitely insect webbing. I then proceeded to the north side of this drier and I removed a panel so that I could see into the drier. On the panel I saw insect webbing and cocoons and inside the panel I observed—excuse me. Inside the main part of the drying machinery I observed one (1) live larva and additional insect webbing. [143]

I then began an inspection of the drying rooms on the west side and I examined a drying room which I designated as the second drying room on the west side.

* * *

A. (Continuing): I observed in this drying room that there were trays of noodles being dried and I saw in one such tray two (2) live moths.

Q. And was a picture taken of that?

A. Yes, sir.

The Clerk: Plaintiff's Exhibit 20 for identification.

(Testimony of Fred Shallit.)

Q. And is plaintiff's identification 20 the picture that was taken of that tray? A. Yes, sir.

Q. Does that fairly represent what it shows?

A. Yes, it does.

Mr. Sager: I will offer the exhibit.

Mr. Yothers: In this plaintiff's Exhibit 20 I assume that this pencil that is showing, that [144] you placed it there yourself, is that correct, to indicate the presence of the moths that you saw?

The Witness: We placed the pencil there to point towards the moths which we saw.

Mr. Yothers: Are those the small dark grey objects at the end of the pencil; are those the moths you refer to?

The Witness: That is right, sir.

Mr. Yothers: Could you tell me, Mr. Shallit, which of the four (4) sections that you refer to, the drying rooms, that this particular picture was taken of?

The Witness: That would be in what I term the second drying room from the north side of the building.

Mr. Yothers: In your Exhibit No. 9 it is divided up into quarters. Was it from the second quarter of that drying room? Is there divisions in the drying room?

The Witness: There are doorways. One enters the drying room through doorways. There is a doorway approximately there (indicating).

Mr. Yothers: This is the second doorway from

(Testimony of Fred Shallit.)

the right-hand side as you approach it, is that [145] right?

The Witness: Well, as you approach it would be on the right side.

Mr. Yothers: The second one from the right?

The Witness: Right side.

Mr. Yothers: With the same reservation, your Honor, no objection to it.

A. (Continuing): I then examined some of these trays which contained the noodle products and of six (6) trays I examined I found insect webbing in the corners of each of these six (6) trays.

The Court: This exhibit will be received in evidence.

(Plaintiff's Exhibit No. 20 marked for identification and admitted in evidence.)

Q. Go ahead.

A. I then proceeded to the east section of the second floor and began an examination of a drying room which I termed drying room No. 8 for the purpose of my notes.

* * *

A. (Continuing): And I examined trays containing noodles that were in this room and again I observed that some trays did contain insect webbing in the corners.

Q. What sort of trays were they?

A. These are approximately four feet (4 ft.) long [146] and perhaps about two feet (2 ft.) wide.

(Testimony of Fred Shallit.)

They are made of wood about two inches (2") thick and they have a screening nailed to the frame.

Q. Wood frame with the bottom made of screening?
A. Yes, sir.

Q. Okey. In Exhibit 20 this shows the screened bottom of one of the trays?

A. Yes, that would be part of the screen bottom.

Q. Does that picture show the way the noodles are laid in these trays for drying?

A. Yes, it does.

Q. Continue, Mr. Shallit. What else did you observe in this place?

A. In the course of my inspection I visited various drying rooms, what I termed No. 8 and No. 7 and drying room No. 3, and I obtained various samples of the drying materials which I placed in clean kraft bags as exhibits.

That completed my inspection for the most part to my present recollection of the second floor.

Q. Well, now, this is all up on the top floor?

A. I made further inspection of the second floor, sir.

Q. You also inspected the second floor?

A. If I may explain. This is termed the top floor. There is also a main floor and there is also a basement.

Q. Well, showing you plaintiff's identification 10, [147] is that what?

A. This is more or less a schematic diagram of the main floor of the Golden Grain Macaroni Company of Seattle.

(Testimony of Fred Shallit.)

Q. Made under your supervision?

A. Yes, sir.

Q. And does it show with reasonable accuracy the layout or plan of the main floor?

A. Yes, sir.

Mr. Sager: We will offer the exhibit.

Mr. Yothers: Subject to the reservation previously made, your Honor, I have no objection to that.

The Court: Very well, let it be received.

(Plaintiff's Exhibit No. 10 marked for identification and admitted in evidence.)

Q. Generally, what operations in the manufacture of the macaroni products are carried on in this floor, Mr. Shallit? The main floor.

A. In the southeast section, which is the section walled off, is the packing equipment. All the packaging isn't done in this area, but it is a place where extensive packaging is done. Also, certain trays of alimentary pastes are in this area on drying trays.

Q. All right, and what inspection, examination did you make on that floor and what did you [148] find?

A. I saw both empty and full drying trays in the southeast area of the packing room. I examined various empty trays and various trays also containing alimentary pastes, and I found evidence of insect webbing and one (1) larva both in the empty trays and in the full trays in some of them.

Q. In some of them?

A. In some of them, yes.

(Testimony of Fred Shallit.)

Q. Anything else there on that floor?

A. I don't believe so, sir.

Q. Now, did you, did that complete your inspection then on this occasion?

A. That completed my inspection of the first floor.

Q. Did you go back there at a later time?

A. Yes, I returned to this plant on July 31, 1951.

Q. And did anybody accompany you on that occasion?

A. Inspector Horace Allen was also with me.

Q. The same one that was on the occasion you just talked about? A. Yes.

Q. Who did you see there on that occasion?

A. Mr. Dedomenico was present in the office. We introduced ourselves again.

Q. That is Mr. Paskey Dedomenico, the defendant? A. Yes, sir. [149]

Q. All right.

A. We stated that we wished to make another factory inspection. Mr. Dedomenico invited us into his office where we chatted for, oh, approximately an hour and in our conversation we told him of our findings on the previous inspection of July 18th and 19th and there was some general discussion of the plant itself.

Q. Well, now, on this occasion, on July 31st, did you ask permission of Mr. Dedomenico to make an inspection? A. Yes, I asked permission.

Q. What did he say?

(Testimony of Fred Shallit.)

A. Mr. Dedomenico said go right ahead to make our inspection. [150]

* * *

Q. Did you talk to Mr. Mulvaney during the course of the inspection?

A. Yes, Mr. Mulvaney very courteously allowed me to make my inspection originally in that when we began our inspection [151] of the flour conveying system it was in operation. I asked Mr. Mulvaney, "May I make my inspection?" and interrupt his work. He very graciously allowed me to. Then, later on, about fifteen (15) minutes later, I told Mr. Mulvaney that the insect filth I found was of great amount and I suggested to him that he probably would not want to continue to dump semolina into the hopper until we completed our inspection, and that he might possibly wish to clean the entire equipment up after we completed our inspection. He was very agreeable and he said that he would take my advice. I explained to him that it was purely advice. I had no authority to tell him what to do, but I was suggesting that it would be a proper procedure on his part.

Q. Well, did he suspend the operation of that machinery while you continued in your inspection?

A. Yes, sir. He suspended that portion of the operation completely and I noted after, as I was leaving the area, that both he and another workman were working on the equipment to clean it up.

Q. Now, getting back again to the inspection you

(Testimony of Fred Shallit.)

made on July 31st, did you make a further inspection of the premises on that occasion?

A. I made another inspection of the flour conveying equipment which was not nearly as detailed as the inspection [152] which I just related.

Q. Did you examine the same general equipment?

A. I examined the hopper, the screw conveyor, the elevator, the main flour storage bin and the dough kneader and the small enrichment tank and some of the screens.

Q. What did you find?

A. I found that although the evidence of insect filth was not nearly as impressive as that which I had found on my previous inspection there were still live moths present and insect webbing and dead moths and larvae.

Q. In all of these various locations?

A. Generally speaking, unless you wish me to go through it step by step, in the same general area as I observed the other infestation.

Q. I understood you to say from time to time, Mr. Shallit, that, during your testimony here, that you took samples from these various parts of the machinery and areas that you were examining?

A. Yes, sir. [153]

* * *

(Testimony of Fred Shallit.)

Direct Examination

(Continued)

By Mr. Sager:

Q. Mr. Shallit, showing you what has been identified as plaintiff's Exhibit 21, will you state what the exhibit is?

A. Exhibit 21 is flour from the screw conveyor directly behind the hopper which was on the top floor as illustrated in the previous diagram.

Q. Would that be from this conveyor?

A. Right, sir.

Q. That is Exhibit 11?

A. That is right, sir.

Q. And how did you take that sample from there?

A. I had a clean glass jar, this jar with a cover on it. I removed the cover and with the aid of a large spoon I held the jar into the flour and scooped the flour into the jar, and then I replaced the cover.

Q. Is there anything visible in there except flour?

A. Yes, there are moths in this flour. I might also add there is a piece of paper present which was added later. That paper contains chloroform to kill the live infestation. [156]

Q. Is that true of these other exhibits where paper is present in them?

A. That is correct.

Q. That is your means of fumigating whatever might be alive in the exhibit?

(Testimony of Fred Shallit.)

A. That is correct.

Mr. Sager: I will offer Exhibit 21, your Honor.

Q. Showing you plaintiff's identification 22, will you state what that is?

A. Exhibit 22 is webbing and insect filth collected from inside of this same screw conveyor as I just previously testified to.

Mr. Sager: I will offer Exhibit 22.

* * *

Q. Showing you plaintiff's identification 23, what does that exhibit consist of? [157]

A. Exhibit 23 is material sifted out of approximately ten pounds (10 lbs.) of static stock which was obtained from the elevator which is adjacent to the hopper which I referred to just previously.

Q. Does that show in this picture (indicating)?

A. No, sir, that would be the reversed side of it. That doesn't show, but it would be slightly below where that long shaft comes down.

Q. Down at the bottom here (indicating)?

A. If I may point a moment, sir. It would be at the bottom of this elevator (indicating). There is a sliding port door and from the sliding port door this Exhibit 23 was obtained.

Q. Is that what you identified as the boot of this elevator?
A. That is right, sir.

Q. This is Exhibit 12 that you have referred to, the picture?
A. Yes, sir.

Q. Now, you used the term static flour. What do you mean by that?

(Testimony of Fred Shallit.)

A. In a bucket elevator from the very nature of the elevator, we have our buckets on chains which are, of course, going around in a complete circle. Housing these bucket elevators is the casing which in this case was wood. At [158] the very bottom of this casing where the elevator makes the turn will be an accumulation of flour which we would call static flour in that it wouldn't move as rapidly as the flour conveyed by the buckets themselves. In fact, the very bottom part of that flour, the very boot or bottom of the elevator will remain fairly dormant.

Q. I see, and it is from that spot or place that you gathered this sample?

A. That particular sample.

Q. Exhibit 23.

A. We took approximately ten pounds (10 lbs.) of flour from this boot, sifted it through a two hundred fifty (250) mesh screen and that material is what remained in the screen after we sifted it.

Q. And what is the material in there then?

A. It is insect webbing and larvae in the webbing.

Mr. Sager: We offer Exhibit 23.

Q. Showing you identification 24, what is that exhibit?

A. Exhibit 24 is webbing, larvae and adult moths taken from the elevator head leading into the flour storage bin.

Q. Referring to plaintiff's Exhibit 12, the head would be this upper portion of this elevator?

(Testimony of Fred Shallit.)

A. That is right, after the casing was removed. After [159] the housing was removed.

Q. And what is in that exhibit?

A. This again is webbing, larvae and adult moths will show in it.

Mr. Sager: We offer Exhibit 24.

Q. And handing you plaintiff's identification 25, from what place in the plant did you obtain that?

A. Exhibit 25 is webbing and larvae scraped from the wall directly to the east of the main flour storage bin.

Q. Is that the same portion of the wall shown in the picture which is plaintiff's Exhibit 15?

A. That is right, sir.

Mr. Sager: We will offer that exhibit.

Q. Showing you plaintiff's identification 26, what is that exhibit?

A. Exhibit 26 is a small portion of noodles with insect webbing and insect excreta taken from a tray located in the drying room which I designated as drying room No. 2, and this tray contained noodles in it that were drying.

Q. The major contents of that jar is apparently paper that you put in to fumigate, is that right?

A. That is right.

Q. The actual noodle part of infestation is shown there at the bottom, the dark spot?

A. That is correct. [160]

Mr. Sager: We offer Exhibit 26. You may inquire.

Mr. Yothers: Mr. Shallit, as to these exhibits

(Testimony of Fred Shallit.)

you have here, Exhibits 21 through 26, those exhibits that contain flour, I notice they each contain a little piece of paper. What did you say that was added for?

The Witness: That is chloroform which has—the paper is first soaked in the chloroform and then added to the jar in order to kill the live infestation which might be present.

Mr. Yothers: When was that added, Mr. Shallit?

The Witness: On the evening of the 18th. These were all added the evening of the 18th at the Federal Office Building.

Mr. Yothers: That has the effect then of killing any of the moths that might be present in the exhibit?

The Witness: The purpose of it, if I may explain just a bit, is to kill the live insect infestation so it will not progress any further.

Mr. Yothers: It won't kill any eggs, will it?

The Witness: I am not acquainted whether it will or not.

Mr. Yothers: It won't kill any of the [161] pupae?

The Witness: I am not an authority on that, sir.

Mr. Yothers: Is it possible then, Mr. Shallit, or do you know that the moths contained in here could have hatched in the flour itself?

The Witness: Would you tell me what specific sample you are referring to?

Mr. Yothers: Let's take sample 21 which contains considerable flour.

(Testimony of Fred Shallit.)

The Witness: May I bother you to see that?

Mr. Yothers: Yes, sir.

The Witness: Oh, Exhibit 21, in taking this sample, this sample was taken, if I may explain in a little more detail——

Mr. Yothers: Well, can you answer my question first and then give the explanation that you wish to give about it?

The Witness: Would you repeat the question?

Mr. Yothers: It is possible that the moths contained therein could have hatched in the flour after you took the sample, is that correct?

The Witness: I am not an authority on whether or not they could in that, as I stated, whether the chloroform will completely kill them. I can't [162] state.

Mr. Yothers: So you don't know whether or not there are any more moths in this flour than were in there at the time you took it or not?

The Witness: No, I do not.

Mr. Yothers: And would the same thing be true as to the other exhibits, Mr. Shallit?

The Witness: That is correct, sir.

Mr. Yothers: So these exhibits that you have obtained to be introduced here may or may not be in the same condition as they were at the time you took them insofar as the moth infestation is concerned?

The Witness: I can state merely from my training and experience what our procedure has been and what our accepted procedure has been, sir.

(Testimony of Fred Shallit.)

Mr. Yothers: In other words, you don't know, is that right?

The Witness: That is correct, sir.

Mr. Yothers: Your Honor, counsel has asked to introduce these exhibits. I object to the introduction of the exhibits on the ground stated relative to the qualifications and the objection to the evidence and further on the ground that so far as these exhibits are concerned, the witness has testified that they may or may not be in the [163] same condition, and he doesn't know whether they are in the same condition now insofar as the moth infestation is concerned and the insect development as they were at the time he took them. I therefore, on both those grounds, I object to the introduction of the Exhibits 21 through 26.

The Court: Objection overruled. Exhibits 21, 22, 23, 24, 25 and 26, heretofore admitted for identification, will be received in evidence.

(Plaintiff's Exhibits Nos. 21, 22, 23, 24, 25, 26 marked for identification and admitted in evidence.)

The Court (Continuing): I want to point out that had the contents of those exhibits been pure from the very beginning, there would be no question about it. There certainly is evidence that there is infestation within the exhibit; whether it progressed to any degree is unimportant as long as it was there initially.

(Testimony of Fred Shallit.)

Cross-Examination

By Mr. Yothers:

Q. Mr. Shallit, referring to your Exhibit No. 25—strike that. Referring now to your Exhibit No. 26, you say this represents the webbing that you found from one of the [164] drying trays, is that correct?

A. This represents some of the webbing which I found in a drying tray.

Q. Where did you find that webbing, where in the drying tray was it?

A. This was in the corner where the wood joins the screening and where noodles were in direct contact with the screening.

Q. How did you get the webbing out? Can you describe the procedure that you followed to get this webbing?

A. I took with my fingers in this particular case and lifted the noodle, found the webbing was adhering to the noodle, and to the wood. I detached the webbing from the wood and left it remaining to the noodle.

Q. Now, what is the general size of these trays? Would it be approximately correct to say it is about the size of this table here?

A. It would be perhaps just a little narrower than that, sir, and perhaps about four feet (4 ft.) long.

Q. Little narrower and about four feet (4 ft.) long?

(Testimony of Fred Shallit.)

A. I would estimate between two feet (2 ft.) wide and four feet (4 ft.) long.

Q. Is that the total amount of webbing that you found in that tray?

A. That was approximately all the webbing that I [165] found in that tray.

Q. How many trays were there at the time?

A. In this particular drying room there were, I counted twenty-six (26) trays.

Q. Did you take samples of webbing from any other tray?

A. Of webbing from any other trays in this drying room, sir?

Q. Yes. A. Not from this drying room.

Mr. Sager: What is that exhibit No.?

Mr. Yothers: 26.

Mr. Sager: Thank you.

Q. Well, if there had been webbing present in the other trays, Mr. Shallit, would you have taken samples of it?

A. No, sir. I testified previously that there was webbing present in the other trays. I did not take from all.

Q. How many other trays had webbing in them?

A. In drying room No. 2, sir?

Q. In the same place where you got this Exhibit 26?

A. Six (6) trays.

Q. Six (6) other trays out of the twenty (20)?

A. Total of six (6) trays, sir.

Q. Total of six (6) trays? A. Yes. [166]

Q. And how much webbing did each of the six

(Testimony of Fred Shallit.)

(6) trays have in it, in excess of this, the sample which you took?

A. I believe that would be representative of the general picture of the webbing in these trays.

Q. Did you take samples of webbing from any other drying room?

A. Not from any other drying room that I can recollect right now of webbing, sir.

Q. Mr. Shallit, you have confined the testimony here to the moth, the pupa, the larva and the webbing. Those are all part of the life cycle of the same insect, is that correct?

A. That would be the same life cycle, sir.

Q. And is that the basis from which you say, and I think you testified, that the conditions were filthy there at the plant, is that correct?

A. The insect infestation is what I would consider to be the filthy element.

Q. That is the only thing you considered in determining whether the plant was sanitary or unsanitary?

A. I believe principally, I will state, that is probably, to my best knowledge at the moment unless I recollect further, that is my basis of my opinion.

Q. Well, you made checks, did you not, to determine whether or not there were any rats or rodents, mice or [167] excreta from any of those animals around?

A. That is right, sir.

Q. You didn't find any?

A. The amount of such filth that I found I con-

(Testimony of Fred Shallit.)

sidered, from my experience as an inspector, to be negligible.

Q. And what about the conditions so far as flies?

A. I can recollect no flies in the plant.

Q. Then, with the exception of this moth condition there was no other unsanitary or insanitary condition to your knowledge and recollection at that plant at the time you made your inspection on July 18th and 19th?

A. I believe that is correct, sir.

Q. The employees were clean and worked in sanitary conditions, did they not?

A. Yes, I was satisfied that they were.

Q. Furnished with clean uniforms?

A. That is right, sir.

Q. Employees, the women employees required to wear hairnets? A. Yes.

Q. Employees all had health cards?

A. I didn't check that.

Q. Did you discuss with any of the employees, sir, other than Mr. Mulvaney or Mr. McDiarmid the conditions, rules or regulations under which they were to work in the [168] manufacture of the products that they were working on?

A. Well, I discussed no rules or regulations with anyone. I have no authority to do that.

Q. I see. Now, you testified here relative to the life cycle of this moth or insect which is the basis for your belief that there was an unsanitary condition there. Can you tell us what is the ordinary life cycle of a moth?

(Testimony of Fred Shallit.)

A. I am not an entomologist. I can tell you what I have read in the literature.

Q. Well, based upon your experience, do you have any knowledge as to what is the life cycle of the moth?

A. Not from my experience, sir, no.

Q. Can you tell us whether or not during periods of warm weather or hot humid weather that the life cycle of the moth is speeded up?

A. No, I don't consider myself—

Q. Do you know what effect the increase in the life cycle of the moth would have upon moth infestation in flour?

A. Specifically on moths, I couldn't state. I can state in general that proper warm conditions will increase the life cycle of insects and plants.

Q. And it is possible, is it not, to clean these various pieces of machinery used in the production at the plant of macaroni say on Monday of a week or on July 14th or 15th and yet the moths will be present on the 18th or 19th? [169]

A. You would like me to speak from my education, sir?

Q. Based upon your knowledge and experience, Mr. Shallit.

A. On my knowledge, sir, which would come, of course, from the literature, may I include that?

Q. Yes, sir.

A. The literature, of course, generally gives the life cycle of the Mediterranean flour moth as eight (8) weeks. From my experience and my knowledge

(Testimony of Fred Shallit.)

and my education and literature, I would state that the entire life cycle would take approximately eight (8) weeks. Therefore, if I see an adult moth I would, in my opinion, believe that that adult moth originated approximately eight (8) weeks ago.

Q. And what would be the cycle between the pupa stage and the moth stage?

A. I don't know the time element.

Q. A total of eight (8) weeks is the cycle from egg to pupa to moth to egg?

A. From egg to larva to pupa to the emergence of the adult moth.

Q. Now, do you know where these moths come from, are they present in the flour, the raw product as used in the manufacture of macaroni products?

A. I am not an authority on that, I don't know.

Q. Well, you have read considerable literature on it, [170] have you not?

A. No, I haven't read too much literature on that.

Q. You say based upon your knowledge and experience as an inspector you don't know where these moths come from?

A. I have read that this particular type of moth is known as a flour storage moth. In other words, it will infest stored materials.

Q. You know, as a matter of fact, do you not, from your knowledge and experience and what you have read, that there is no such thing as an insect moth-free flour?

A. I have heard the discussion and read some of

(Testimony of Fred Shallit.)

the discussion that there are possibilities, that it is impossible to have a ton of flour or any set quantity of flour absolutely free from insect fragments.

Q. Now, referring to Exhibit No. 23, I believe you stated it is the material you sifted out of ten pounds (10 lbs.) of flour on a twenty (20) mesh screen, is that correct? A. That is right, sir.

Q. Are you familiar with the size and type of this screen that is used there at the Golden Grain Macaroni Company in the manufacture of their product?

A. What screen are you referring to?

Q. Screens that they use on their sifters.

A. I made estimates of the sifter, of the size of the screen that was over the main flour storage bin. [171]

Q. And what size was that?

A. I estimated it to be approximately one-sixteenth of an inch ($1/16''$), a sixteenth or perhaps a thirty-second of an inch ($1/16''$ or $1/32''$).

Q. Is that larger or smaller than a twenty (20) mesh screen?

A. Thirty-second of an inch ($1/32''$) would be smaller than a sixteenth of an inch ($1/16''$).

Q. So that the screen they use to sift out the flour and sift out these foreign materials was actually finer than the screen you used to sift out this material in 23?

A. It was approximately the same size.

Q. About the same size? A. Yes, sir.

Q. Now, how many sifters did they use in the

(Testimony of Fred Shallit.)

process of sifting the flour out before it goes into the product?

A. I noted sifters in my examination. I can't say if there were more, but I examined two (2).

Q. I believe you also testified, Mr. Shallit, did you not, that you found some moths and larvae, webbing around the throw-out; is that correct? That is, it would be behind the sifter?

A. I testified, as I recollect, that I found webbing and larvae on that throw-out.

Q. And what is the purpose of the throw-out, sir? [172]

A. The throw-out, the entire sifter is to remove coarser materials such as paper, string and other debris which might fall initially into the hopper, into which the hopper is primarily dumped.

Q. Also to catch moths and things of that sort, is it not? Anything that is larger than the flour grain itself?

A. Anything larger than the screening, sir, would naturally be removed.

Q. That is the very purpose of it, is it not?

A. Yes, that is correct.

Q. That is one of the sanitary features of a good macaroni plant, good sanitary macaroni plants, to have proper sifters in it, is that correct?

A. That is correct.

Q. Would you say the sifters at the Golden Grain Macaroni Company were good sifters?

A. I think they were good sifters.

Q. Mr. Shallit, what procedures were used out

(Testimony of Fred Shallit.)

there at the Golden Grain Macaroni Company at the time you made your inspection on the 18th and 19th which were not good sanitary practices and procedures? A. What procedures that I did?

Q. No, no, no, excuse me. I will rephrase that question again. What procedures did you observe were being used at the Golden Grain Macaroni manufacturing plant when you inspected it on July 18th and 19th which were not good [173] sanitary practices and procedure in the manufacture of macaroni?

A. My principal observation in that respect would be on the initial investigation in which flour, semolina, more correctly, was being dumped into a hopper in which I observed considerable insect filth. Now, I don't consider that obvious insect filth being incorporated with flour is a good sanitary procedure.

Q. That procedure was at a point in the process prior to the time it went through the sifter, is that correct? A. Yes, sir.

Q. Were there any other procedures that you observed out there which in your opinion were not proper sanitary procedures?

A. I don't believe so.

Q. That is the only one? A. I believe so.

Q. Did you have any guides or standards that you follow in making inspections and that you did follow on July 18th and 19th to make a determination as to whether or not conditions you observed were sanitary or unsanitary other than those you testified to now?

(Testimony of Fred Shallit.)

A. Well, I, of course, guide myself from my experience as an inspector, from my factory inspections I have made. [174]

Q. Have you inspected other macaroni plants, sir? A. I have.

Q. In this immediate area? A. I have.

Q. And how often have you made those inspections, sir? A. How often, sir?

Q. Yes.

A. I wouldn't be able to answer you specifically.

Q. I will ask you this question: How many inspections have you made, or did you make in June and July of 1951?

A. I made one other inspection in July of 1951.

Q. In July of 1951? A. Right, sir.

Q. In a plant other than the Golden Grain Macaroni? A. Yes, sir.

Q. How often have you made an inspection out at Golden Grain Macaroni Company other than the three (3) times you have testified to here?

A. I have made inspections a few years prior to July 18th and 19th.

Q. Now, this other plant that you inspected in July of 1951, would you say it was in a sanitary condition?

A. In my opinion it was a sanitary plant.

Q. Was it in any better sanitary condition than the Golden Grain Macaroni Company? [175]

A. Yes, sir.

Q. And were there any moths present in that plant? A. Yes, sir.

(Testimony of Fred Shallit.)

Q. Where were those moths present?

A. I found two (2) moths present in that plant.

Q. Whereabouts?

A. In the area of the flour bin, main flour storage bin.

Q. And did you find any rat or rodent excreta or rat or rodent evidence or any evidence of rodent present in that plant?

A. I found none.

Q. What plant was that that you inspected, sir?

A. That was the Mission Macaroni Company.

Q. Mission Macaroni?

A. Yes, sir, in Seattle.

Q. Now, what procedures did you follow in making inspection of that plant, sir?

A. I began much as I began in this, with the Golden Grain in that I first inspected the flour conveying system, the flour that was stored.

Q. Static flour in the bucket conveyor there?

A. There was static flour.

Q. You found no moths there?

A. No moths. [176]

Q. No larvae? A. No, I found no larvae.

Q. No webbing?

A. I found webbing in the main flour storage bin in two clumps of it.

Q. Do you have your notes of that inspection with you?

A. I have notes on that inspection, sir.

Q. I ask you to produce them.

Mr. Sager: Now I am going to object to that,

(Testimony of Fred Shallit.)

your Honor, because it is not material in any event whether some other factory is clean or unclean.

The Court: Objection sustained.

Mr. Sager: No bearing upon the condition of this factory.

Mr. Yothers: Your Honor, I'd like to make an offer of proof relative to this matter.

The Court: If you are going to make an offer of proof that comparison would show the difference between this plant and the one heretofore inspected of the Mission Macaroni, I will not entertain it. What is the nature of your offer please?

Mr. Yothers: The nature of the offer of proof, your Honor, is that this inspector about [177] the same time made an inspection of the Mission Macaroni plant, that if he produced his notes of his inspection the notes and he would testify as to the conditions that he found which were comparable to the conditions that he found at the Golden Grain Macaroni plant. Based upon that, he made assumptions in both cases, one of them contrary to the other that one was a sanitary condition and the other was an unsanitary condition. He has taken the stand here as an expert witness testifying as to what is sanitary and what is unsanitary. That is a question of fact and it can be supported by evidence by expert witnesses and by lay testimony.

Here they have attempted to support it by an expert witness who bases his opinion on certain facts he found. Now, on cross-examination we desire to show that upon a similar set of facts and similar

(Testimony of Fred Shallit.)

circumstances he arrived at an entirely different conclusion.

The Court: Offer of proof is denied. I am not here to try the sanitation or lack of sanitation of the Mission Macaroni Company. I am here to try the sanitation features of this particular case. [178]

* * *

Q. Yes. Did you make any determination at the time you made your inspection on July 18th and 19th as to the general cleaning procedures which were followed by the employees of the Golden Grain Macaroni Company?

A. I made no inspection of their procedures.

Q. Did you make any determination whether or not they had or were using a system of spraying or fumigation of the raw product, that is, the flour and of the equipment itself?

* * *

A. I can relate a discussion I had with Mr. McDiarmid to that effect.

Q. Other than that you have no information of your own knowledge, is that right? [179]

A. I have information of the spray that was used in that—

Q. What spray were they using?

A. It was a two per cent (2%) chlordane spray.

* * *

Q. Is that the same type of spray that is used throughout the industry in the local area for the purpose of controlling moths?

(Testimony of Fred Shallit.)

* * *

A. I hesitate to recommend a chlordane spray. It is a poisonous spray.

Q. I beg pardon?

A. A chlordane spray is a poisonous spray and if used should be used with caution and it should not come in direct contact with a food material.

Q. At the time you made your inspection, Mr. Shallit, did you see any evidence of any moldy or decomposed materials being used?

A. No, I did not.

Q. Moldy or decomposed material in the food product itself? A. No.

Q. Is it possible, Mr. Shallit, for a manufacturer [180] of semolina products to manufacture that under conditions that are absolutely free from moths, larvae, webbing?

A. You state a manufacturer of semolina or semolina products?

Q. Of semolina products, of macaroni, spaghetti and noodles?

A. To be absolutely free, you mean not a single insect or any other evidence of insect in the plant?

Q. Yes.

A. I have seen plants without evidence of it, sir, but ordinarily you will find some slight evidence of the presence.

Q. And the presence or absence of moths depend upon the temperature, depend upon the type of wheat that is used, does it not?

(Testimony of Fred Shallit.)

A. Are you making that statement, sir, or asking?

Q. I am asking you if that is not true?

A. The presence of the moth depends upon the temperature, you say?

Q. Yes, the presence or absence of moths and larvae?

A. They have to be initially present, of course, before the temperature will have any effect on them.

Q. I understand that. The product, this they use, which is flour, is never free from insects, from moths, infestation? [181]

A. I have stated that from my literature which I have read and from the conversations which I have had, ordinarily flour and related products may not be one hundred per cent (100%) free from insect filth.

Q. Well, you are familiar with the bulletins and regulations of Mr. George Larrick, are you not?

A. Not all of them, sir, by any means.

Q. Beg pardon?

A. Not all of them, sir, not by any means.

Q. Well, you remember the statement of Mr. George Larrick in which he advised that it is impossible for any manufacturer to manufacture semolina products or farinaceous products completely free from moth infestation, that there is no such thing as one hundred per cent (100%)?

A. Do you have that statement here?

Q. Beg pardon?

A. Do you have that statement?

(Testimony of Fred Shallit.)

Q. Yes. A. May I see the statement?

Q. The statement is: "We know for example——

* * *

Mr. Sager: Just a moment, just a moment.

If the Court please, I object to reading any [182] statement under those circumstances unless it is identified.

The Court: Objection sustained.

Mr. Sager: I move the statement read by counsel be stricken.

The Court: It may go out.

Q. Did you make an inspection of the Golden Grain Macaroni plant, sir, in May or June of 1951?

A. May or June? No, sir, I did not.

Q. The inspection upon which your testimony is based then in this matter is the inspection that you made on July 18th and 19th, is that correct?

A. I have also referred to July 31st.

Q. And July 31st? A. Yes.

Q. Is that correct? A. That is correct.

Q. Did you have any knowledge at all of the conditions of the plant in June? A. Of 1951?

Q. Do you have any knowledge at all of the conditions of the plant of Golden Grain plant in June of 1951? A. No, I have not.

Q. Or of condition of the plant on July 15th or prior to July 15 of 1951? [183] A. I have not.

Q. I think I said July 15th. I meant prior to July 18, 1951?

A. Prior to July, I have not, sir.

(Testimony of Fred Shallit.)

Q. Mr. Shallit, at the time you went out to the Golden Grain Manufacturing Company on July 18th, did you know that Mr. Dedomenico was not in town? A. Prior to making my inspection?

Q. Yes.

A. Not prior to entering the plant, no.

Q. When did you find out that Mr. Dedomenico was not there?

A. When I talked to the receptionist.

Q. That is what I am referring to. That was prior to the time you made your inspection, wasn't it?

A. I considered my inspection from the time I asked permission. That is part of my inspection procedure.

Q. And you knew that Mr. Dedomenico was not in town at that time?

A. I was told by the receptionist that he was not in town.

Q. And what instructions did you receive prior to the time you went out there to make the inspection, sir, and from whom did you receive those instructions?

A. I was instructed by my chief inspector, Douglas C. [184] Hanson, to make a factory inspection of the Golden Grain Macaroni Company.

Q. When did you receive those instructions, sir?

A. I can't state specifically. I will say it is within the week preceding July 18th and 19th.

Q. Mr. Shallit, I believe you started to testify as to the general description of the building out

(Testimony of Fred Shallit.)

there. Can you give us a little more detailed description of the building, the size of the top floor which is referred to in Exhibit No. 9?

A. The size of the top floor, of course, is the size of the bottom of the main and basement floor in that it——

Q. It is a square building?

A. Practically square, yes, sir.

Q. And about how big is the top floor?

A. I would say it was about ninety-five feet (95 ft.) by one hundred and five feet (105 ft.) as an estimate.

Q. Well, one hundred by a hundred (100 x 100) would be approximately right, too, wouldn't it?

A. That would be fairly right, yes.

Q. How high is the ceiling?

A. I would estimate—the ceiling on the second floor, sir?

Q. Yes.

A. I would estimate it to be probably about [185] seventeen feet (17 ft.)

* * *

Redirect Examination

By Mr. Sager:

Q. Showing you plaintiff's Exhibit 21, Mr. Shallit, were there moths present in that as you scooped it from whatever place you scooped it?

A. At the place where I obtained this sample there were eleven (11) live moths in the corner from which this flour or semolina was taken.

(Testimony of Fred Shallit.)

Q. And in taking the sample did you get some of those moths?

A. Yes, in taking the sample I observed that some of the moths did enter my sample.

Q. So you know that at least some of the moths were present at the time you took the sample?

A. Yes, sir, I do. [186]

* * *

Q. (Continuing): Counsel asked you what you considered as being insanitary or unsanitary procedures in the plant as you observed them. You answered something to the effect that the dumping of flour and semolina into the bin which had obvious evidence of insect infestation was an insanitary practice or condition. Now, would you consider the operation of this flour conveying system in the conditions you found it to be in, a sanitary practice?

A. No.

Mr. Yothers: I object to the question, your Honor, it is leading, that question.

The Court: Objection overruled.

Mr. Yothers: Not proper redirect.

Q. You may answer.

A. I would consider it to be an insanitary condition.

Q. On the basis of your experience in macaroni factory inspections, that is, inspections of this type of factory, are you able to say whether or not the conditions you found there on July 18th and 19th existed for some period prior to that date? [187]

A. I would say that they did.

(Testimony of Fred Shallit.)

Q. And can you say how much prior or——

A. It would be difficult to state how much was present at a prior date.

Q. Well, could that condition have developed over night?

A. No, if I may enlarge a little bit upon that. I testified I saw, I believe, approximately one hundred (100) moths or more in the plant which are adult moths. The adult moths, unless they were brought in as adult moths, could not have occurred over night. It would have taken a period of weeks for these adult moths to have become adult moths.

* * *

Recross-Examination

By Mr. Yothers:

Q. Now, the raw product which is brought in there contains adult moths, does it not, as the flour, as it comes in? A. I wouldn't state that, sir.

Q. You mean to say that it does not contain this, this flour that they get from the manufacturer does not contain moths?

A. I would say ordinarily in my examination of flour, [188] and I have examined many sacks of flour, a person does not find adult moths in an ordinary sack of flour.

Q. What would you find; you'd find larvae, pupae?

A. On the ordinary sanitary flour which is the principal flour which we find, there is no visual evi-

(Testimony of Fred Shallit.)

dence of insect infestation in the flour or on the sack.

Q. Are you certain of that?

A. From my experience sir, I am stating it.

Q. Did you inspect the flour that was out there?

A. I inspected flour sacks.

Q. Did you inspect the flour that they had out there?

A. You are talking about the flour or the sacks?

Q. The flour. A. That is not in the——

Q. The flour that they got in that they were going to be using for the manufacture of macaroni.

A. If I may explain, the flour is in hundred pound (100 lbs.) sacks approximately.

Q. I understand that.

A. I examined the outside, I believe it was. There were approximately quite a few hundred bags of flour stored in the basement. I examined the outside of those bags.

Q. But you didn't open up any of the bags or did you examine any of the bags that were opened ready to be used?

A. I obtained samples with Inspector Allen from some of [189] these, from a number of these flour bags.

Q. And it is your testimony now that there was no evidences of any moths at all in any of the flour that they were using?

A. In any of the raw material flour, sir, which was unopened and which I myself obtained a sample from, I saw no evidence of insect filth.

(Testimony of Fred Shallit.)

Q. What about those that were opened?

A. I can't testify to that. I did not observe any open sacks. I might state, I didn't examine the open sacks.

Q. And then you don't know whether or not any moths were brought in in the raw product, itself?

A. I can't state that conclusively.

Q. How does that flour, first of all, where is that flour produced, sir?

A. Where is it produced?

Q. Yes.

A. The raw material, of course, will come from various mills throughout the country.

Q. And how is it sent or shipped to the Golden Grain Macaroni Company, for example?

A. Well, I wouldn't be able to tell you how it was sent or shipped.

Q. Well, would it come in by truck or by freight-car or boxcar? [190]

A. I have never seen any of them moving.

Q. Did you make an inspection of any of the boxcars?

A. No; in this plant, sir?

Q. Yes.

A. No, I didn't.

Q. Is the basis for your saying the conditions might have existed for some time solely because of the fact that you saw live moths?

A. I base it upon my experience and my information that the life cycle of the Mediterranean flour moth is approximately eight (8) weeks.

Q. But you don't know what the life cycle is in hot weather except that it is shortened and you don't know what the cycle is between the larva and

(Testimony of Fred Shallit.)

the pupa stage and the moth stage, is that correct?

A. I do not, that is correct.

Q. Well, a moth can develop from a larva, can it not, or from a pupa, can it not, in a matter of hours?

A. I am not an authority. I can not state that.

Q. The moth is simply the emergence of the insect from the pupa stage?

A. The developed insect.

Q. It is somewhat like the birth of a human being, one state of the period of gestation, one day it is born and the other day it is not, right? [191]

A. That is a rather rough comparison, sir.

Q. And these moths upon their emergence from the pupa stage start to fly around, don't they?

A. Again, I am not an authority.

Q. Well, that is one of the characteristics of the moth, is it not, it can fly?

A. I can say it probably does, but I am not stating that I know it does.

Q. Well, you base it upon your knowledge and reading about the Mediterranean flour moth, do you not?

A. The literature which I said states the adult moth emerges from the pupa after the adult stage has arrived.

Q. I think I asked you this question about the spray previously, but I'd like the Court's permission to reopen that question for one (1) or two (2) questions. What do they use this spray for? What is the purpose of the use of this spray?

(Testimony of Fred Shallit.)

A. Well, I can tell you what Mr. McDiarmid's conversation was.

Q. Well, no, I mean based upon your knowledge and experience as an inspector, what do the manufacturers make use of the spray for, what is its purpose?

A. The purpose of an insect spray is to kill insects.

Q. And the insect you are referring to is the [192] moth, is that correct?

A. In this particular case from my experience I would say that they would use this spray to kill this moth which was in this plant.

* * *

Q. You took samples, did you not of the elbow macaroni and the spaghetti on July 16th of 1951?

A. That is right, sir.

Q. And where did you get those?

A. From the West Coast Fast Freight Lines in Seattle.

Q. And what type of containers were they in?

A. They were in cardboard cases.

Q. Beg pardon? A. In cardboard cases.

Q. In cardboard cases? A. Yes.

Q. Were the packages themselves in cellophane packages?

A. No, it would be called a bulk pack.

Q. It was a bulk pack? A. That is right.

Q. Did you open up the cardboard pack?

A. Yes, I did.

Q. And did you make an inspection then of the bulk product contained therein?

A. I observed the product as I obtained my sample. [193]

(Testimony of Fred Shallit.)

Q. Did you see visible insects or insect fragments in it?

A. I saw nothing that looked like an insect fragment.

Q. That is as to both the macaroni and the spaghetti? A. Yes, sir.

Q. Do you know when that macaroni or spaghetti was produced?

A. At the time of my sampling I had no knowledge of it.

* * *

Further Redirect Examination

By Mr. Sager:

Q. Did you acquire any knowledge of it before?

A. I inquired as to the meaning of a certain code system later on, July 19th, and the code was explained to me at that time.

Q. From whom did you inquire?

A. From Mr. McDiarmid.

Q. Well then, on the basis of that, can you tell when that was produced?

* * *

A. On the sample 29-871 L, which is elbow macaroni, [194] on the case was coded No. 281. The explanation of that code is that it is the 28th week of 1951. The other case I saw no code on it, the other product.

Q. Mr. Shallit, you say you took some samples from the flour stock there at this plant on the 16th or 19th? A. Yes.

(Testimony of Fred Shallit.)

Q. Where was this flour stock kept in the plant?

A. Are you referring to the raw materials?

Q. Well, the flour and semolina which was in sacks waiting to be used in the manufacturing process?

A. It is stored in the northwest section of the basement.

Q. And how is it stored there, just in the flour sacks as—or in bins, or how?

A. They are in, most of them were hundred pound (100 lb.) sacks mostly, all of them stacked one on top of the other approximately ten (10) sacks high.

Q. Now, what sort of samples did you take from this flour there?

A. I first identified the flour as to its labeling and then from each lot of flour, each lot which I determined to be a lot by its specific labeling, I obtained a representative sample from certain bags throughout that lot.

Q. And how much, how many samples did you take then of that?

A. Well, in each case, of course, it will [195] vary. May I refer to—(Whereupon, the witness took a document from his pocket.) There were on a rough estimate, probably twenty-five (25), perhaps fifty (50) different samples obtained and in each case, of course, as an example, from eighty-nine (89) one hundred pound (100 lb.) bags I selected Durum Durella Semolina No. 1. I obtained

(Testimony of Fred Shallit.)

ten (10) samples of it by inserting a trier through the center of the bag.

I should state more specifically, that Inspector Allen and I worked on it together and then by allowing the flour to emerge from the trier into the container, the sample was thus obtained, after which the opening made by the trier was sealed.

Q. What do you call this gadget?

A. A trier. If I may describe it, it is an instrument approximately two or two and a half feet (2 ft. or 2½ ft.) long. It is made, I believe, of brass and it is semi-circular.

Q. Well, it is just something you punch in the sack so the flour or semolina will roll out?

A. Yes, that is right.

Q. Then you seal that hole afterwards, is that it?

A. That is correct.

Q. Now, what did you do with these samples you took?

A. These samples were placed in cartons, taken back to the laboratory in Seattle, Washington. Excuse me. Taken back to my office in Seattle, Washington, together with [196] Inspector Allen's. A seal was placed on them and the sealed packages were submitted to the laboratory in Seattle.

Q. And were they given sample numbers?

A. An over-all sample number was given to the various exhibits which we have seen and to the flour samples which we took, and that number was INV 90-418 K.

Q. And there were how many of these samples

(Testimony of Fred Shallit.)

taken from the different lots of flour that you took?

A. From the flour itself?

Q. Yes, well, in semolina, whatever——

A. Flour and semolina. It would be a matter of counting them, sir, I could state briefly there are one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8) lots, and from each of these lots there are component parts.

Q. There are what?

A. Component parts. In other words, from the eighty-nine (89) one hundred pound (100 lb.) bags of selected durum durella flour, semolina, I took ten (10) samples from ten (10) different bags.

Q. I see.

A. The same thing applies to each of the other sample subs which I indicate as subs. [197]

* * *

Q. Well, would you step down, Mr. Shallit, and state whether or not these cartons and jars on the table here are the samples that you took from this flour?

A. Without going through each one individually, I will say yes.

* * *

Further Recross-Examination

By Mr. Yothers:

Q. These samples are the samples that you took from the raw product (indicating samples on table), which was stored in the basement there at the Golden Grain Macaroni plant, is that correct?

(Testimony of Fred Shallit.)

A. There was some storage on the second, top floor. Some samples were taken also from there.

Q. Without regard to where they were stored this represents samples of the raw flour which was being used in the manufacturing process down there at that time? A. Yes.

Q. Or were in storage to be used?

A. That is a presumption that I believe [198] is correct.

Mr. Yothers: Counsel, are you going to mark the entire set as one exhibit?

* * *

Mr. Yothers: That being the case, your Honor, we have no objection to that procedure. Just have the chemist's report of his analyses of these samples. We will stipulate they were taken from these samples. [199]

* * *

HORACE A. ALLEN

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name. A. Horace A. Allen.

Q. What is your occupation, Mr. Allen?

A. I am an inspector for the Federal Food and Drug Administration.

Q. And where are you stationed at the present time? A. At Spokane, Washington.

(Testimony of Horace A. Allen.)

Q. Where were you in July of 1951?

A. I was stationed here in Seattle.

Q. And did you assist with Mr. Shallit in the inspection of this plant, the Golden Grain Macaroni plant?

A. I did.

Q. How long have you been with Food and Drug Administration?

A. About nine (9) years.

Q. And in what capacity during that time?

A. As an inspector.

Q. And what has been your experience with respect to this type of plant?

A. I have had considerable experience both in macaroni [200] manufacturing plants and in flour mills that manufacture flour, that type of thing.

Q. That is experience in your capacity as an inspector?

A. Yes.

Q. In inspections?

A. Yes, as an inspector in inspecting flour mills and macaroni manufacturing.

Q. Were you present all the time during which Mr. Shallit was making an inspection of this plant on the 18th and 19th? Were you and he together all the time?

A. Yes, we were.

Q. And likewise on the 31st?

A. Yes.

Q. You took the pictures that have been offered here?

Mr. Yothers: Just a minute, your Honor. At this point I'd like to pose the objection previously given to the testimony of Mr. Shallit on the grounds stated at that time, that permission was not received

(Testimony of Horace A. Allen.)

from the owner, operator or custodian of the plant. Therefore, testimony of Mr. Shallit and Mr. Allen should not be permitted to be given at this time in this trial.

The Court: The objection will be overruled for same reasons I have heretofore stated. [201]

Q. (Continuing): With respect to that matter, Mr. Allen, were you present with Mr. Shallit in the office when you first went there, when he first went there and later when he came back?

A. Yes, we entered the plant together.

Q. And did you hear his testimony concerning his obtaining permission to inspect the plant?

A. Yes, I did.

Q. Would your testimony be the same?

A. It would be the same.

Q. With respect to your inspection with Mr. Shallit of these various parts of the plant and machines, would your testimony, did you hear his testimony?

A. I heard it all but just about a few minutes last evening at the end of the testimony. Other than that I heard all of it.

Q. And would your testimony be the same as his?

A. It would. [202]

* * *

Cross-Examination

By Mr. Yothers:

Q. Mr. Allen, were you here at the time I [203] cross-examined Mr. Shallit? A. Yes.

Q. Would your testimony and answers to ques-

(Testimony of Horace A. Allen.)

tions on cross-examination be substantially the same as his? A. Yes. [204]

* * *

ROBERT T. ELLIOTT

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name.

A. Robert T. Elliott.

Q. And you are now retired, are you Mr. Elliott?

A. Yes, sir.

Q. When did you retire?

A. July 31, 1951.

Q. Where do you live at the present time?

A. At the present time I live fifty (50) miles north of Seattle near the town of Silvana.

Q. And what was your occupation before you retired?

A. Chemist for the United States Food and Drug Administration.

Q. How long had you been employed in that capacity? A. Thirty-three (33) years.

Q. And what were your general duties as chemist with the Food and Drug Department?

A. For the most part, examination of foods. I had also during that time some inspection work, administrative work and various things, but for the most part it was examination of foods for violation of the Food and Drug Act. [205]

(Testimony of Robert T. Elliott.)

Q. What was your formal training?

A. I have a Bachelor of Science Degree in Chemistry from South Dakota State College, 1914.

Q. Any experience in the field of chemistry?

A. Not until 1918 when I entered the Food and Drug Administration.

Q. Since then your work has been, as you have explained? A. That is right.

Q. Examination of foods?

A. That is right.

Q. Mr. Elliott, have you made an analysis of samples submitted in this case? A. I have.

Q. And how did you receive those samples?

A. They were in a sealed condition bearing inspectors' seals, identified. The seals were intact.

Q. And what did you do with them?

A. I broke the seal, removed portions for analysis.

Q. Now, you identified them by sample number?

A. That is right. [206]

* * *

ROBERT T. ELLIOTT

having been previously sworn on oath, was called to resume the witness stand on behalf of the Plaintiff, and testified as follows:

Direct Examination

(Continued)

By Mr. Sager:

Q. Did you make an analysis of the sample identified as 30-340 L? A. Yes, sir.

(Testimony of Robert T. Elliott.)

Q. What did that sample consist of?

A. The sample consisted of twelve (12) twenty-four ounce (24 oz.) packages of cut macaroni in one sealed carton. Seals were identified by Inspector James A. Ford dated 7/16/51 and numbered 30-340 L.

Q. Now, what sort of an analysis did you make of that sample, Mr. Elliott?

A. I took six (6) packages from that case and examined eight ounces (8 oz.) from each of those six (6) packages.

Q. And will you tell us briefly the sort of process or analysis that you make of this sort of product?

A. I used the official method prescribed to us for use in alimentary pastes which consisted, briefly, of acid and alkali digestion of the material in the presence of water and heat, and the subsequent filtering of the digested material through a filter, and examination of the product [224] left on the filter under microscope.

Q. In the course of this digestive process what part of the macaroni or spaghetti or whatever it is, is filtered out or is separated?

A. The macaroni material, starches, proteins and so forth are digested into a liquid form which may be filtered through. Insect parts, solid material, rodent hairs, various other extraneous materials which are not proteins or starches, would not digest and would remain in substantially their original condition.

(Testimony of Robert T. Elliott.)

Q. And they are separated out by the filter?

A. That is right.

Q. Now then, you examine that visually?

A. We examine it under the microscope.

Q. What does your examination show with respect to this sample 30-340L?

A. In the six (6) eight ounces (8 oz.) subdivision (a) at the time, all of three pounds (3 lbs.), I found sixty-two (62) fragments of insect or larva, moth scales present in subs 2, 3, 5 and 6, that is four (4) of the six (6) subdivisions. And I found rodent hair fragments.

The Court: What is that?

The Witness: Rodent hair fragments in all subdivisions except one.

Q. Now with respect to sample 29-871 L? [225]

A. What is that number?

Q. 29-871 L. What did that sample consist of as you received it?

A. That was elbow macaroni. There were two (2) sealed cartons of eight (8) two and one-half pound (2½ lb.) subdivisions in paper bags. From the eight (8) subdivisions I took eight ounces (8 ozs.) from each of four (4) and made analyses of those by this same method that I described in the other sample.

Q. Then what did you find?

A. In the two pounds (2 lbs.) examined I found twenty-four (24) insect or larva fragments. I found in addition to that I found one (1) larva capsule

(Testimony of Robert T. Elliott.)

which is the part remaining from the head of a worm.

* * *

A. (Continuing): And I also found one (1) insect egg in that. I might state that in this method generally insect eggs are not recovered. Occasionally we do find them.

* * *

Q. They are digested with the other material?

A. Either that or so mutilated that they can't be recognized.

Q. Have you given us your entire findings [226] on that sample??

A. There were moth scales present in two (2) of these subdivisions, none noted in the other two (2).

Q. Can you identify the moth scale?

A. As to the variety of moth?

Q. Yes.

A. That would be difficult. I have made some study of that and I find that there is a variation in moth scales enough so that they might overlap and not be a definite identification of the various moths. These scales resemble those that I have seen as belonging to the Mediterranean flour moth.

Q. You had an opportunity to examine these exhibits, I think they are 21 through 26, at the time they were brought into the laboratory or shortly thereafter? A. Yes, I did.

Q. Have you seen them recently?

A. Looked at them the other day, yes, today.

(Testimony of Robert T. Elliott.)

Q. What can you say as to their condition now and the condition in which you saw them when they came into the laboratory?

A. I didn't open the jars, but looking through the glass they looked substantially the same as they did at that time.

Q. Did you observe moths in some of [227] these? A. Yes, I did.

Q. And what moth is that?

A. That is the Mediterranean flour moth.

Q. Have you completed your testimony on this sample 29-871 L? A. Yes.

Q. All right, tell us about your analysis of sample 29-872 L.

A. That was spaghetti. The sample consisted of one (1) sealed carton of two (2) two and one-half pound ($2\frac{1}{2}$ lbs.) portions in paper bags. The seals were identified 29-872 L, 7/16/51, Fred Shallit. I took eight ounces (8 ozs.) from each of the two (2) portions, of the two (2) parts of the sample and examined them in the manner I have previously described. In the first one I found eight (8) insect or larva fragments and in the second one I found six (6) insect or larva fragments.

Q. That was——

A. Moth scales were present in each section.

Q. What about sample 29-477 L now?

A. That was elbow macaroni sample consisted of one (1) sealed carton of twelve (12) fourteen ounce (14 oz.) packages. Identified 29-477 L, 7/26/51, Charles M. Chambers. I took one-half pound ($1\frac{1}{2}$

(Testimony of Robert T. Elliott.)

lb.) from each of six (6) of those twelve (12) packages and examined it in the [228] manner I have described. In there I found a total of seventeen (17) insect or larva fragments, one small rodent hair, and found moth scales present in all portions.

Q. Now you are giving the total of insect fragments from the entire subdivisions?

A. From the entire three pounds (3 lbs.), yes.

Q. Were there some present in each subdivision?

A. Yes, ranged from one (1) to four (4).

Q. Is that also true of the prior sample 29-871 L?

A. Yes, there are insect fragments present in each one.

Q. Now with respect to 29-477 L, what—

A. That is the one I just finished.

Q. Excuse me, that is the one you just testified to?

A. Yes, sir.

Q. I am behind one here; all right, the next one would be 29-478 L.

A. It consisted of one (1) sealed carton of twenty-four (24) fourteen ounce (14 oz.) packages. Seals were identified 29-478 L, 7/26/51, Charles M. Chambers. I opened six (6) of those packages and examined eight ounces (8 oz.) from each of the six (6). I found insect and larva fragments in all of the subdivisions, a total of seventy (70) in the three pounds (3 lbs.). [229]

* * *

A. (Continuing): In addition I found one (1) larva capsule in one (1) subdivision and one (1)

(Testimony of Robert T. Elliott.)

rodent hair in one (1) subdivision. The moth scales were present in all portions.

Q. Does the fact that you find fragments of larvae or insects in these examinations indicate that—does it have any significance as to whether the product as you received it, these insects were whole or whether they were in fragments then?

A. No, the fragments I found in these cases were imbedded in the macaroni, in the paste. I always make an examination of the packages that I receive to see whether there is any indication of gross contamination such as live insects or larvae outside of the material itself, either inside of the bag or out, but these were imbedded in the material and not visible as looking at the material in its original form.

Q. Well, what would your process of analysis, the mixing up of this macaroni and digestion of it, would that destroy the fragments that were present before you did that?

A. No, it wouldn't destroy them.

Q. Or would it break them down? A. No.

Q. Mr. Elliott, have you examined [230] macaroni products at other times during the course of your work for the Food and Drug Administration?

A. Yes, very many of them.

Q. Could you give us some estimate of how many?

A. Well, for the last ten (10) years of my employment I examined a great majority of the samples that came into the Seattle district. I probably

(Testimony of Robert T. Elliott.)

examined between two and three hundred (200 and 300) alimentary paste samples during that time, each sample of which might consist of anywhere from one (1) to a dozen (12) units, and each of these units would be examined separately so that——

Q. Now calling your attention to the sample jars and cartons on the table here that were referred to by Mr. Shallit, did you take an analysis of all of these?

A. I made an analysis of samples composited somewhat, some entire samples from single jars and others in which I took portions from some of the containers and composited them for single analysis.

Q. How many of these samples are there?

A. Sample 90-418 K consisted of four (4) sealed cartons. These cartons contained four (4) paper bags, five quart (5 qt.) paper cartons, twenty-four pint (24 pt.) paper cartons, nine (9) half pint (1½ pt.) jars, sixteen (16) one pint (1 pt. jars, eleven (11) one quart (1 qt.) jars, making a total of sixty-nine (69) subdivisions. [231]

I went through that sample observing each one, but not analyzing all of them. Those that are obviously for exhibit purposes only——

* * *

A. (Continuing): ——obviously for exhibit purposes only and so noted in the inspector's memorandum were not analyzed. I observed them through the——without opening the jars. Some of the flour samples were analyzed by me.

Q. How many of these flour samples did you

(Testimony of Robert T. Elliott.)

analyze? I am speaking, Mr. Elliott, of the raw material samples, that is, the flour and semolina?

A. Subdivisions from 25 to 32, some of which consisted of more than one carton, were examined and that was the raw material in this sample.

Q. And how many of those samples did you actually analyze?

A. The actual determinations made, twelve (12).

Q. How did you make the—the same sort of analysis of that as you——

A. That was done by the flour method which is slightly different than the one I described, but substantially the same idea.

Q. And what did those findings show with respect to examination in those samples?

A. I found small amounts of filth in [232] some and in some no filth at all. In sub 25, that is the first one, I found in fifty grams (50 gm.) one (1) mite and one (1) larva which was not a moth larva because it was much too small.

* * *

The Witness: M-i-t-e, mite, and two millimeter (2 mm.) larva, which is too small to be a moth larva.

A. (Continuing): And no other filth. In subdivision 26 I took fifty grams (50 gm.) from each of two (2) parts of that sample, each part consisting of the five (5) subdivisions as submitted, that is, portions from ten (10) of those.

In the first fifty grams (50 gm.) I examined I found two (2) legs of the mite. In the second one I found no filth whatever.

(Testimony of Robert T. Elliott.)

Subdivision 27, I believe there was only one (1) portion of that. I examined fifty grams (50 gm.) and found one (1) rodent hair, one millimeter (1 mm.) long.

In subdivision 28 I made composites, each of which consisted of five (5) of the cartons, and made three (3) composites that would cover fifteen (15) cartons. In the fifty grams (50 gm.) examined under number 1, I found no filth; number 2, no filth; number 3, one (1) insect seta, [233] which is a little hair noted on insects and larvae.

In number 29 I examined two (2) fifty gram (50 gm.) portions, each being composites of three (3) subdivisions. In the first one I found one (1) insect fragment and in the second one I found no filth.

Subdivision 30, I composited four (4) of the cartons or parts of the sample into one (1) fifty gram (50 gm.) portion. I found no filth.

Subdivision 31, there was a composite made of four (4). One (1) sample of fifty grams (50 gm.) examined, no filth found.

Subdivision 32, flour composite of four (4) and fifty gram (50 gm.) portion examined, no filth found.

Q. The insect parts or whatever it was you found in these flour samples, were they—can you state whether or not that was the same insect from which you found fragments in the samples taken from the shipments, these sample numbers that you just previously testified to?

(Testimony of Robert T. Elliott.)

A. I didn't make a note of that. I wouldn't say for certain whether they were the same or not. I know that I didn't find moth evidence in the raw materials and I found moth evidence in the finished product. There may have been an occasional fragment in the finished product which could be attributed to the raw material, but certainly no moth material was found in the raw product [234] examined.

Q. Now, when you say moth material, do you include the larva and pupa?

A. Yes, all larvae, pupae or adult moths.

* * *

Cross-Examination

My Mr. Yothers:

Q. Mr. Elliott, when did you make the analysis of sample No. 30-340 L? Do you know the date of the analysis?

A. I received the sample on the 23rd of June and I reported it on the 24th.

Q. Where did you get the sample from, Mr. Elliott?

A. I got it from the Chief Chemist of the Food and Drug Administration.

Q. And what was the condition of the sample at the time you received it, sir?

A. It was sealed, in a sealed carton. [235] Is that what you mean?

Q. Yes. And what did that carton contain, sir?

A. I beg pardon?

(Testimony of Robert T. Elliott.)

Q. What did that carton contain?

A. It contained twelve (12) twenty-four ounce (24 oz.) packages of cut macaroni, cellophane bags.

Q. Now, at the time you received the sample 30-340 L, Mr. Elliott, did you examine the contents visually? A. Yes.

Q. Did you make that examination prior to the time that you ran the test? A. Yes.

Q. Did you, as a result of that examination, sir, determine if there was any filth?

A. I didn't find any evidence of filth on the outside of the packages or on the material as I took it out to examine it chemically.

Q. No evidence of any filth on the package or on the contents themselves? A. No, sir.

Q. By the way, Mr. Elliott, filth is rather an abstract term. What do you mean when you say filth?

A. Evidence of insect or rodent activity is the general term, decomposition, mold and things of that sort are also termed filth in some cases, particularly decomposition. [236]

Q. Was there any mold or decomposition found as the result of either your visual examination or of your microscopic examination of this sample?

A. No, I found none.

Q. Was there any evidence of mold or decomposition as a result of your visual or microscopic examination of any of the samples?

A. No, there was not.

Q. The only evidence that you had then, as I understand, sir, is the evidence of insect activity to which you had previously testified?

(Testimony of Robert T. Elliott.)

A. That is right.

Q. And based upon that, in your opinion, is the food product of these samples contaminated by that filth?

A. That is right.

Q. Now, how large are these insect fragments?

A. Well, they vary in size. Most of them are so broken up in the process of manufacturing the product that they are microscopic in size. Some of them could be seen with the naked eye, but you must take a microscope to properly identify them. I mentioned in one sample that I found a capsule. That is the head covering of a larva. That would be large enough so that you could recognize it with the naked eye.

Q. Well, can you give some indication how large that [237] was, the size it would be?

A. Oh, capsule will be from a thirty-second to a sixteenth of an inch ($1/32''$ to $1/16''$) in diameter.

Q. A thirty-second to a sixteenth of an inch ($1/32''$ to $1/16''$) in diameter?

A. Yes, depending on the size of the larva.

Q. What power microscope did you use to determine that?

A. It is called a low powered microscope, about forty (40) diameters.

Q. Magnifying forty (40) times?

A. That is right.

Q. Now, can you describe the characteristic of the appearance of a moth scale, sir?

A. A moth scale is sort of a filament-like object that comes almost to a point at one end, and at the

(Testimony of Robert T. Elliott.)

other end it is sort of feathered. It is hard to describe it without drawing a picture of it, but it is fan-shape to a slight degree, not wide open, but narrow and it—

Q. How large is it?

A. Not over a millimeter (1 mm.) or two (2 mm.), which would be not over a tenth or a sixteenth of an inch ($1/10''$ or $1/16''$) long, any of them.

Q. Are they similar in appearance to wheat hull?

A. Oh, no. [238]

Q. They are not? A. No.

Q. Can you describe a wheat hull, sir?

A. A wheat hull is a piece of the outside covering of the wheat and it has its definite characteristics. There is no resemblance whatever between a piece of wheat hull and a moth scale. Moth scale is grey in color under the microscope and the wheat hull is usually tan or brown.

Q. Mr. Elliott, do you use a mesh or filter to filter these, this matter out?

A. Yes, it is very fine.

Q. How fine is that mesh?

A. In some instances a paper is used which is so fine that nothing at all will go through it except a liquid. Other times we use a very fine mesh bolting cloth, one hundred to a hundred and twenty (100 to 120) per inch.

Q. It is so fine, is it not that it is opaque, you can't see through it?

A. Well it is translucent, yes.

(Testimony of Robert T. Elliott.)

Q. And would a twenty (20) mesh screen screen out these fine particles, sir?

A. Not—some of them it would, some wouldn't. Some of those fragments were large enough to be caught in a twenty (20) mesh screen. Most of them that are broken up into the paste itself, would not—would go through a twenty (20) mesh [239] screen.

Q. Would the presence of these insect fragments, such as you found in the samples that you examined, sir, would they be injurious to health after the product was cooked and ready for consumption?

Mr. Sager: I will object to that, your Honor, because it is immaterial. The question is not whether the product is injurious to health. It is wholly immaterial.

The Court: Objection sustained.

Mr. Yothers: I don't wish to appear to argue with the Court, your Honor, on the matter of the Court's ruling, but the purpose of the question, your Honor, was it goes to the question of whether or not the fragments as found were filthy and I think the word "filthy" is not defined under the statute as something which is, would be considered in its ordinary meaning, and certainly if a matter is not injurious to health is one of the factors that the Court has, as trier of the facts, to take into consideration in making a determination as to whether these things are filthy or not.

The Court: The Court has ruled, counsel.

Q. What was the size of the sample used by

(Testimony of Robert T. Elliott.)

you in [240] making your analysis in 30-340 L, Mr. Elliott?

A. I used a half pound ($\frac{1}{2}$ lb.) in each portion that I analyzed.

Q. You used one-half pound ($\frac{1}{2}$ lb.) of each portion? A. Yes, sir.

Q. How many grams would that be?

A. Two hundred twenty-five (225).

Q. I understood you to say you used three pounds (3 lbs.). That is the total?

A. Total of six (6) subdivisions, six (6) portions.

Q. Oh, I see, that would be a total then of six (6) times two hundred twenty-five grams (225 gm.), is that correct? A. That is right.

Q. Thirteen hundred and fifty grams (1350 gm.) if my arithmetic is correct? A. That is right.

Q. So your total finding as to that particular sample then, you stated, was in the sum total of sixty-two (62) fragments, is that right?

A. That is right.

Q. Can you break that down as to the individual amount in each sample, sir?

A. Yes, I have it here.

Q. As to sample number 1, how did you designate that? [241]

A. I will call it portion number 1.

Q. Portion 1 was five (5)? Portion 2 was nine (9)?

A. Portion 2 is nine (9). Portion 1 is five (5).

Q. Yes?

(Testimony of Robert T. Elliott.)

A. Portion 3 is ten (10). Portion 4 was sixteen (16). Portion 5 was fourteen (14). Portion 6 was eight (8).

Q. Did you make slides, sir, of these samples that you took? A. No, I did not.

Q. Microscopic slides were not made?

A. No.

Q. Why didn't you make slides, sir?

A. The material is on paper and we don't as a rule try to keep those because they wouldn't stay in the condition they are. They dry out and are lost. We can't cover them with cover glasses because of the shape of the material. Would cause it to break and probably break the fragments and we just don't attempt to keep those things.

Q. Now sir, referring to sample 29-871 L, that is the elbow macaroni? A. Yes, sir.

Q. And what—how many samples did you take of that?

A. That sample consisted of nine (9) bags of bulk macaroni about two and one-half pounds (2½ lbs.) each, and I analyzed a half pound (½ lb.) from each of four (4) [242] of those bags.

Q. For a total of two pounds (2 lbs.) then?

A. That is right.

Q. That would be four hundred fifty grams (450 gm.)?

A. Nine hundred grams (900 gm.), wouldn't it?

Q. Nine hundred grams (900 gm.). And you broke that down into portions, did you?

A. Four (4), yes.

(Testimony of Robert T. Elliott.)

Q. Four (4) portions. Would you give us the results of the portions?

A. Number 1 seven (7) fragments.

Q. Seven (7)?

A. Seven (7). Number 2 contained nine (9). Number 3 contained four (4). Number 4 contained four (4). In addition to that there was one (1) larva capsule in number 3.

Q. One (1) larva capsule?

A. One (1) insect egg also in number 3.

Q. And as to sample 29-872 L, would you break that down for us also, please?

A. I examined two (2) eight ounce (8 oz.) portions from that making a total of one pound (1 lb.) or four hundred fifty grams (450 gm.). In the first portion I found eight (8) segments or larva fragments and in the second one I found six (6) moth scales present in both portions. [243]

Q. How many moth scales, sir?

A. I didn't count them.

Q. Did you make any estimate as to the number or—

A. No, they are—usually when we note that moth scales are there they must be in a substantial number or we wouldn't even mention it because a moth scale is something that can be detected even if a moth flies over, but when there are enough scales in there to indicate the product has come in direct contact with a moth, then there will be enough scales there to—

Q. How many would that be, sir?

(Testimony of Robert T. Elliott.)

A. Oh, fifty (50) or more, probably.

Q. In each sample?

A. No, I won't say there were that many in each sample, but more than two (2) or three (3) at least.

Q. But you don't know how many are in each of the samples? A. No.

Q. This test that you have just explained now, who set the standard on that, sir?

A. You mean who?

Q. Who advised you the standard as to whether or not to make the report of the moth scale being present or not being present? Is that part of the regular standard test?

A. No, it is more or less of my own experience in the [244] vast number of samples I have examined. When you find one (1) or two (2) moth scales where there is no evidence of moths being present—if you don't find moth fragments or moth larvae fragments, you might even then find one (1) or two (2) moth scales but when they are in substantial numbers in connection with moth fragments, you assume that those are substantial enough to mention.

Q. That is an assumption that you made in this case, is it? A. That is right.

Q. Now, as to the next, 29-477 L, will you break that down for us, please?

A. I took eight ounces (8 oz.) from each of six (6) packages, a total of three pounds (3 lbs.). The

(Testimony of Robert T. Elliott.)

first one I got one (1) fragment, the second four (4), the third one two (2).

Q. Just a minute. First one was what?

A. One (1). Second was four (4). Third was two (2). Fourth was three (3). Fifth was four (4), and the sixth was two (2). Also, I found moth scales in all portions examined.

Q. And as to 29-478 L?

A. I examined six (6) half pound ($\frac{1}{2}$ lb.) portions of that. Portion number 1 I got eighteen (18) insect larva fragments. Number 2, fourteen (14). Number 3, four (4). [245] Number 4, twenty-two (22). Number 5, seven (7). Number 6, five (5), a total of seventy (70). I found one (1) larva capsule in number 4 in which there were twenty-two (22) fragments. Moth scales were present in all portions.

Q. Is the test that you used, sir, the one that is authorized and approved by the Association of Agricultural Chemists? A. Yes, sir.

Q. And is that also the same thing true of the flour sample test analysis that you ran on that?

A. Yes.

Q. Of the flour sample tests that you ran, were they? A. What?

Q. Semolina test?

A. I tested for filth in both semolina and flour, yes.

Q. Can you give us the citation of authority for this test, Official and Tentative Methods of Analysis of the Association of Official Agricultural Chem-

(Testimony of Robert T. Elliott.)

ists—strike that. Perhaps I can ask you this question. Was that the same test that is set forth in the sixth edition of the—is that the test that is set forth in the sixth edition of the Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists, page 782, paragraph [246] 42.37? A. Page?

Q. Pages 781 and 782,

A. What is that volume again?

Q. Sixth edition.

A. I have the seventh edition. I have the sixth edition (procuring it). What was that paragraph again please?

Q. 42.37 and 42.30, two (2) tests.

A. That is for alimentary paste.

Q. Beg pardon? A. 42.30?

Q. Yes. A. Yes, that is the one.

Q. That is the test for flour sample, is that correct? A. Yes.

Q. Is that the same test that you used?

A. That is right.

Q. And the test that you used on the samples of macaroni products, is that the test, paragraph 42.37, the same book?

A. Yes, that refers you back to 42.28 which is the same test essentially. Slightly different in wording in the two volumes. I used this later volume in my directions.

Q. Different in wording but the methods are the same? [247] A. Not materially, no.

(Testimony of Robert T. Elliott.)

Q. In making your test, Mr. Elliott, did you weigh the original sample?

A. You mean first before I started?

Q. Yes. A. I always weigh.

Q. Did you weigh the individual portions?

A. Yes.

Q. And did you make a record of those weights of the individual portions?

A. Yes. Do you mean the portions I analyzed or the whole bag?

Q. No, the portions you analyzed?

A. Yes, I weighed out exactly the ounces in every case.

Q. In each case there were eight ounces (8 oz.) to a portion? A. That is right.

Q. Did you make an attempt to weigh the insect fragments that you observed as a result of your analysis? A. No, sir.

Q. Can you give us an approximation, sir, of the relationship as to weight the insect fragments had to the total sample?

A. No, I don't believe I could.

Q. It would be extremely small? [248]

A. Yes, extremely small.

Q. Almost infinitesimal?

A. I wouldn't answer that.

Q. Can you give—did you make any quantitative analysis at all of the product?

A. Only as to the number of fragments that I found.

Q. And can you give us any idea of the relation-

(Testimony of Robert T. Elliott.)

ship, the volume of insect fragments to the total volume of the sample?

A. It would be very small too.

Q. Would that—would the insect fragments that you found in sample 30-340, sir, render that unfit for food or consumption?

A. That is not my province to determine.

Q. Well, do you have an opinion on it, sir?

A. Yes, sir.

Q. Would it render it unfit?

A. I would think so.

Q. And what do you base that on, sir?

A. Because it is a filthy product.

Q. Let's take portion number 1 of sample 30-340 with five (5) insect fragments in that one (1) eight ounce (8 oz.) portion, would that render that unfit for food, in your opinion?

A. I wouldn't want to eat it if I knew they were [249] there. I don't think they would hurt me if I eat it not knowing it was there, but knowing it was there I wouldn't want to eat it.

Q. Well, would your answer be substantially the same as to each one of the portions of each of the samples?

A. I think so. I'd consider the sample as a whole, not one portion alone.

Q. Well, take portion number 1, 29-477, one (1) fragment, would your answer be the same as to that?

A. I wouldn't consider it fit to eat, not because of that one (1) fragment, but because of the asso-

(Testimony of Robert T. Elliott.)

ciation with other portions of the same sample and from the same course.

Q. In that sample there was no portion that had more than four (4), is that correct?

A. Yes, I believe that is right.

Q. Would your answer be the same under those circumstances?

A. Not from the number of insect fragments alone, no.

Q. Mr. Elliott, check me if I am wrong on this. As I understand the tests you made on the samples of the finished product, the macaroni and spaghetti were on a basis of two hundred twenty-five grams (225 gm.) in each portion? A. That is right.

Q. And the tests that you made on the flour were on [250] the basis of fifty grams (50 gm.) per portion? A. That is right.

Q. Doesn't this test provide that the testing of flour, that is, the analysis as set forth in the book referred to previously, provide that the test should be made on the basis of one hundred gram (100 gm.) samples?

A. 42.30 says weigh fifty grams (50 gm.) of flour into a two hundred fifty (250) beaker.

Q. Well, perhaps you can answer this question. Would it make any difference if you used a fifty or one hundred gram (50 gm. or 100 gm.)—

A. Well, the test is difficult to make with too much of a starchy material present. You have to confine it to a small enough amount so you can handle that during the process of digestion and so

(Testimony of Robert T. Elliott.)

forth, and a large amount of flour makes it very difficult to get the fragments in condition where you can find them.

Q. And is the same thing true of semolina?

A. Well, semolina, by using huge volumes of the material that we use to digest it, you could use—I could use more than a half pound ($\frac{1}{2}$ lb.), but a half pound ($\frac{1}{2}$ lb.) is a very convenient size to use and is considered enough.

Q. And a half pound ($\frac{1}{2}$ lb.) is about a hundred grams (100 gm.)?

A. Two hundred twenty-five grams [251] (225 gm.).

Q. That is the reason why you used that portion in the case of the finished product?

A. Well our experience with these methods prescribed which we use all the time, we can do it economically and efficiently and the eight ounces (8 oz.) is found to be the best amount to use, or two hundred twenty-five grams (225 gm.). You understand, these methods have been tried by a large number of chemists and they are arrived at through a large number of determinations and that is the end result.

Q. Mr. Elliott, based upon your experience and the number of years as a chemist for the Food and Drug Administration, I think you indicated that you had made examination of several samples of macaroni and macaroni products. In your opinion, sir, is it possible for macaroni products—strike that. Is it possible for the raw material, flour, to

(Testimony of Robert T. Elliott.)

be completely one hundred per cent (100%) free from any infestation whatsoever or evidence of insect activity including moth scale, larva or egg in the practical application to the production of macaroni and macaroni products?

A. I might answer that by saying I have examined a great many samples both of the flour, semolina and the finished products and lots of them, I couldn't say offhand what proportion, but lots of them have been entirely free from filth.

Q. Entirely free from any insect activity or evidence [252] of insect activity such as moths or moth scales?

A. Not discovered by these same methods used.

* * *

Redirect Examination

By Mr. Sager:

Q. These publications you have been referring to, these books, Mr. Elliott, are they, do they have any relationship to this Association of Agricultural Chemists you mentioned?

A. Yes, they are the methods arrived at by this Association and published as their methods.

* * *

Q. Were you a member of that Association?

A. Ex officio food analyst, I was, yes.

Q. During your work with the Food and Drug Administration?

A. That is right.

* * *

Mr. Sager: I understand counsel will stipulate

(Testimony of Robert T. Elliott.)

with respect to these codes. On Count 2, sample 30-340 L the code number was 251. On Count 3, sample 29-871 L the code number was 281. That with respect to Count 5, sample 29-477 L, the [253] code number was 301, and that same code number applied to sample 29-478 L with respect to Count 6.

And additionally, I understand counsel will stipulate that those code numbers, the first two (2) digits indicate the week of the year. In other words, 281, that would be the twenty-eighth week, and the third digit means 1951; and that the code indicates the product was manufactured during that week.

Mr. Yothers: That is correct, your Honor.

Mr. Sager: So stipulated.

Mr. Yothers: So stipulated.

The Court: The Court will accept that stipulation.

Mr. Sager: Now the Government offers in evidence the records of this Court in Cause No. 47116. I understand it is stipulated that the defendants named in this Cause 47116 are the same defendants now on trial.

Mr. Yothers: That is correct.

The Court: The Court accepts that stipulation. Is that stipulated to or are you offering it in evidence?

Mr. Sager: I offered the file in evidence. [254]

* * *

The Court: The indictment charges that on March 14, 1947, said Golden Grain Macaroni Com-

(Testimony of Robert T. Elliott.)

pany, Inc., a corporation, and Paskey Dedomenico, an individual, were convicted in this court of violation of the Federal Food, Drug and Cosmetic Act, Docket No. 47116, which conviction had become final before the violation heretofore alleged was committed. The acceptance of this file in evidence is merely proof of that allegation in the [255] indictment.

* * *

The Court: If this case were to be tried before a jury I would handle it entirely different, so for this purpose, for the purpose which I have already indicated, I think it is properly admissible in evidence and I will so admit it.

Mr. Yothers: For that purpose there is no objection, your Honor.

(Plaintiff's Exhibit No. 27 marked for identification and admitted in evidence.)

Mr. Sager: The Government rests, your Honor.

Mr. Yothers: Your Honor, at this time the defendants move in the proper motion for an acquittal, this not being a trial before a jury. We challenge sufficiency of the evidence. I'd like to take up as to Paskey Dedomenico first and then as to the defendant Golden Grain Macaroni, separately. [256]

* * *

The Court: I don't care to hear any argument on what constitutes filth. Filth is to be taken in its ordinary accepted term. Incidentally, the case of United States vs. Lazere, 56 Fed. Supp., 730

(Testimony of Robert T. Elliott.)

is a case involving bakery goods. They found rodent hairs and insect fragments. The Court held that they constituted a filthy substance. Now, filth is filth. You don't have to go into any refinements about analyzing what constitutes filth to me. You will abandon that portion of your argument. [262]

* * *

The Court: It wouldn't have existed there at all if proper precautions had been taken. [264]

* * *

The Court: This is to be interpreted as a motion for acquittal?

Mr. Yothers: Yes.

The Court: Both motions will be denied as to the corporation defendant and as to the individual defendant. You may proceed. [276]

JACK KENNEDY McDIARMID

being first duly sworn on oath, was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. Would you state your full name, please?

A. Jack Kennedy McDiarmid.

Q. How do you spell the last name?

A. M-c-D-i-a-r-m-i-d.

Q. Where do you live, Mr. McDiarmid?

A. 1027 South 101st, Seattle.

(Testimony of Jack Kennedy McDiarmid.)

Q. And how long have you resided there, sir?

A. Five (5) years.

Q. By whom are you employed?

A. Golden Grain Macaroni Company.

Q. For how long?

A. Approximately six (6) years.

Q. And in what capacity, sir?

A. Sales manager.

Q. In what capacity were you employed in May and June and July of 1951?

A. As sales manager.

Q. And as sales manager what are your duties and responsibilities, sir?

A. I have charge of all sales and anything pertaining [277] to sales.

Q. Do you have any duties with relation to the operation of the business other than the sales?

A. No, I haven't.

Q. Do you have any of your duties with relationship to the production of any of the food products that are produced out there?

A. No, I have not.

Q. In the absence of Mr. Dedomenico are you in charge of the building, of production?

A. No, I am not.

Q. Who is?

A. Mr. Mulvaney has charge of the production.

Q. Is that same—was that true in June and July of 1951?

A. Yes, it was.

Q. Was Mr. Dedomenico present in July the 18th, 19th of 1951?

A. No, he wasn't.

(Testimony of Jack Kennedy McDiarmid.)

Q. Where was he, sir?

A. He was in San Francisco.

Q. And when had he left?

A. To the best of my knowledge he had left about two weeks previous to that. I don't remember the date.

Q. Do you recall the occasion when Mr. Shallit and [278] Mr. Allen came out to the Golden Grain Macaroni plant? A. I do.

Q. On July 18th? A. Yes.

Q. Can you relate what your conversation with them was, sir?

A. Well, I came into the plant at about eighty-three and the two (2) inspectors were there, and they asked permission to inspect the plant. And I saw no reason at all to refuse them, so I told them to go ahead.

Q. Did you have any authority? Were you authorized by Mr. Dedomenico, sir, to permit anyone to go into the plant?

A. No, I was not authorized by him.

Q. And at that time who was the custodian of the plant, sir?

A. Well, Mr. Mulvaney has always had charge of the production.

Q. Well, was he in charge of the building and the warehouse and plant?

A. Yes, he had been in charge of the plant and the warehouse.

(Testimony of Jack Kennedy McDiarmid.)

Cross-Examination

By Mr. Sager: [279]

Q. Mr. McDiarmid, when you got down to the plant there on whatever day the inspectors were there, you say they were there at the time when you got there? A. Yes, they were there.

Q. When you first walked in?

A. Yes, they were in another office.

Q. And did you see anybody in the plant before you saw them? A. Just our office girl.

Q. Did she tell you they were waiting to see you? A. Yes, she did.

Q. Did she tell you they wanted to inspect the plant?

A. I don't recall whether they said that or not. She said, "The inspectors from the Pure Food and Drug are here."

Q. Waiting to see you? A. Yes.

Q. Did she tell you that she had—did she tell you what they wanted to do?

A. No, she didn't. That is the only conversation I believe she had with me.

Q. You went then immediately to see them?

A. I came out immediately, yes.

Q. What was that girl's name, Mr. McDiarmid?

A. Her name is Shoemaker.

Q. Is she still with you? [280] A. Yes.

Q. Still receptionist? A. Yes.

Q. Did you respond to this notice or citation

(Testimony of Jack Kennedy McDiarmid.)

that was issued by the Food and Drug Administration? A. Yes.

Q. And went with Mr. Dedomenico to the office of Mr. Monfore? A. Yes, I did.

Q. During the course of that interview you told Mr. Monfore that in the absence of Mr. Dedomenico you were in charge, did you not?

A. No, I don't believe I said I was in charge. I believe I told him I was the manager.

Q. The manager of the plant?

A. No, no, that is wrong. I didn't say the plant manager.

Q. What did you—what were you the manager of? A. Sales manager.

Q. You already told them you were sales manager, didn't you? A. I probably did.

Q. You were present when he dictated this report to his stenographer?

A. I don't know. He was taking notes. I don't recall [281] whether he was dictating or not.

Q. Don't you recall that after the conversation, after he had taken notes that he had called in the stenographer and dictated to her and he asked you gentlemen to observe what he dictated, and when he concluded he asked you if what he had dictated wasn't substantially what had happened, what had been said?

A. It has been some time ago. I don't recall him dictating to his stenographer. I remember him asking the questions.

Q. Don't you recall saying this at the conclusion:

(Testimony of Jack Kennedy McDiarmid.)

He asked, "Does the proceeding or record of hearing as I have dictated it represent a true report of the hearing?" Do you recall that?

A. No, I don't.

Q. Didn't you tell—in fact, didn't you tell Mr. Monfore there that you are the sales manager of the Seattle plant and that you act as manager in the absence of Mr. Dedomenico?

A. Well, I act as sales manager in the absence of Mr. Dedomenico, but not as production manager.

Q. You act as sales manager when he is present, don't you?

A. Yes, and when he is absent too.

Q. So there would be no purpose in your drawing that [282] distinction, would there?

Mr. Yothers: I object to this. It is argumentative, your Honor.

The Court: I am very much interested in hearing his explanation of that, overruled.

A. Well, the only way I can explain it, is I have nothing to do with the production end of the plant whatsoever and never have had.

Q. But you are in charge?

A. But I have everything to do with sales and the organization and anything that pertains to sales I have jurisdiction over. For instance, if an order doesn't go out on time or something of that nature, I would go into the shipping department and find out what the trouble was. In as far as that there, my authority ends. I have nothing whatsoever to do with the production of the plant, the manufacturing

(Testimony of Jack Kennedy McDiarmid.)

of the goods or the checking in of the incoming freight or anything of that type.

Q. I am directing my questions to you, Mr. McDiarmid, as to what you said at this hearing before Mr. Monfore.

Mr. Yothers: If it please the Court, he has already said that he did not say this. This Exhibit No. 8 is what Mr. Monfore says is his record.

The Court: He hasn't said yet. He didn't [283] say that. That is what I am trying to find out, why he draws a distinction, calling himself sales manager one time and then saying he acts in the capacity of manager in the absence of Mr. Dedomenico. That is what I want to find out. Did you say that or didn't you?

The Witness: If I said that I misspoke myself. I certainly didn't mean to infer that I was the manager of the plant.

The Court: Well, did you or did you not say it was your best recollection?

The Witness: My best recollection says that I didn't say it.

Q. You don't recall this being dictated either, in your presence, is that true?

A. No, I don't recall the details of it at all.

Q. I am not asking about the details. Do you recall the matter being dictated to a stenographer in your presence?

A. I don't recall that either.

Q. You don't recall the stenographer being present?

A. No.

(Testimony of Jack Kennedy McDiarmid.)

Q. Who is the over-all manager or one in charge of the Seattle plant? A. Mr. Dedomenico.

Q. This company also has a plant in California, isn't [284] that true?

A. Well, I wouldn't know that.

Q. You don't know that?

A. Mr. Dedomenico is president of the corporation.

* * *

Q. I asked you if—doesn't the company also have a plant in California?

A. Oh, I am sorry. I misunderstood you. They certainly do.

Q. That is where Mr. Dedomenico was on this occasion? A. Yes.

Q. Does he go down there frequently?

A. Quite frequently, yes.

Q. Now, who is in charge of the general operation when he is away?

A. Well, there is three (3) departments that would be in charge. It would be the manufacturing department which is headed by Mr. Mulvaney, and the bookkeeping department and the sales department and they are all run by individuals.

Q. And isn't there anybody over the three heads of those departments, anybody? [285]

A. Other than Mr. Dedomenico, no.

Q. So that when he goes each department is on its own and wholly independent of any superior?

A. That is right. If we want him we can always get in touch with him by phone usually.

(Testimony of Jack Kennedy McDiarmid.)

Q. When the agents talked to you on the occasion of this inspection they told you that they had been advised that Mr. Dedomenico was absent?

A. Yes, I believe they did.

Q. Or at least you had some conversation there on the subject to the effect that he was absent?

A. They knew he was absent when I first talked to them.

Q. Did they tell you that they had sought permission from Mr. Mulvaney?

A. They did not.

Q. Or that the girl did? A. No.

Q. They asked your permission and you granted it? A. They did.

Q. You assumed the responsibility to grant their request to make the inspection?

A. I didn't know otherwise. I gave them permission. I presumed they had the right to enter the plant.

The Court: Why didn't you say go and see [286] Mr. Mulvaney? You testified that he was in charge of production?

The Witness: Well, I presumed that they could enter the plant without even seeing anybody, to tell you the truth. I thought they could go right ahead and make their inspection.

Q. Didn't they ask you for permission?

A. They did.

Q. You knew they had been waiting around there for some period of time, didn't you?

(Testimony of Jack Kennedy McDiarmid.)

A. Yes, they had been, about a half hour, that is, I did find that out.

Q. Waiting to get your permission?

A. Yes.

* * *

Redirect Examination

By Mr. Yothers:

Q. Did you—did the inspectors at any time ask you for permission to inspect the plant at some other time? A. Not to my knowledge.

Q. Do you know whether or not they contacted Mr. Mulvaney? A. I didn't know.

Q. Do you know whether or not on that date they [287] contacted Mr. Mulvaney?

A. I didn't know it until the testimony yesterday that they contacted Mr. Mulvaney.

Q. Well, when they contacted you, Mr. McDiarmid, on July 18, 1951, can you tell us what their conversation was? Did they say we want permission, or did they say we came to inspect the plant, or what was it? What did they say to you?

A. No, they asked permission to inspect the plant.

Q. And you told them to go ahead?

A. I told them to go ahead.

Q. I take it that you didn't ask them if they had asked Mr. Dedomenico or Mr. Mulvaney?

A. No, I didn't. [288]

* * *

ALLEN T. BUTLER

being first duly sworn on oath, was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your full name.

A. Allen T. Butler.

Q. And where do you reside, Mr. Butler?

A. 528 Lakeside Avenue, South.

Q. And here in the city of Seattle?

A. Seattle.

Q. What is your profession, sir?

A. Chief General Sanitation in Seattle, King County Health Department.

A. And were you acting in such capacity in 1951? A. Yes, sir.

Q. Is it a part of your duty, sir, to keep track and charge of the records of inspections that are made by your inspectors? A. Yes, sir.

Q. And do you have the copy of the record of inspections that were made by your inspectors of the Golden Grain Macaroni Manufacturing Company in 1951? A. I have.

The Clerk: Defendant's Exhibit A-1 for [289] identification.

Q. Handing you what has been marked as Defendant's Exhibit A-1 for identification, I will ask you if you can identify that, sir? A. Yes.

Q. What is it?

A. It is a record of three (3) separate inspec-

(Testimony of Allen T. Butler.)

tions made of the Golden Grain Macaroni Company's plant at 4715 6th Avenue South, by the District Sanitarian.

Q. And can you give us—are those part of the official records of your office? A. They are.

Q. Kept under your supervision and direction?

A. That is right.

Mr. Yothers: I offer it in evidence.

Mr. Sager: May I inquire on voir dire?

The Court: You may.

Mr. Sager: I assume, Mr. Butler, that the name signed at the bottom of these, in one instance with Tabor, is it?

The Witness: Forbes.

Mr. Sager: And the other, Forschmiedt, that they were the ones that made the inspections?

The Witness: That is correct.

Mr. Sager: You didn't make the [290] inspections?

The Witness: No, I didn't make the inspections.

Mr. Sager: You have no knowledge of the conditions of the factory yourself?

The Witness: No, sir.

Mr. Sager: I will object to the exhibit, your Honor on the ground it is hearsay and object further to the second and third sheets on the ground that they are dated in 1952 and would be too far removed from the period here involved.

The Court: Is this record kept in your regular course of business, sir?

The Witness: Yes.

(Testimony of Allen T. Butler.)

The Court: I don't think it adds much to the situation. It doesn't help the Court very much but I will admit it in evidence.

(Defendants' Exhibit No. A-1 marked for identification and admitted in evidence.)

Q. One other question relative to this exhibit, Mr. Butler. Mr. Forschmiedt who made the examination on May of 1951, is he in your employ at the present time? A. No.

Q. Do you know where he is?

A. He is still in the city. I don't know where he is employed. [291]

* * *

JOSEPH W. MULVANEY

being first duly sworn on oath, was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. Please state your full name.

A. Joseph W. Mulvaney.

Q. Where do you live, Mr. Mulvaney?

A. 8438-9th Southwest.

Q. Where are you employed, sir?

A. Golden Grain Macaroni Company.

Q. How long have you been employed there?

A. About six (6) years.

Q. In what capacity, sir? A. Foreman.

Q. And what are your duties as foreman, sir?

(Testimony of Joseph W. Mulvaney.)

A. See that everybody is kept working, doing their work properly, see that the production keeps going all the time, take care of maintenance.

Q. Production maintenance? Supervision of the employees, is that part of your duties?

A. To an extent, yes.

Q. Can you explain to us little more in detail what your duties as supervision of the employees consists of?

A. Oh, setting up machinery; sometimes a [293] decision what is going to be made.

Q. Do you supervise the working conditions under which they work?

A. Supervision, to an extent, yes.

Q. And how many employees do you have working for you under your supervision, Mr. Mulvaney?

A. Around nine (9).

Q. And what do those employees do, sir?

A. Well, there are girls that run the packaging machines. One (1) girl takes care of the shipping room and I have two (2) men that work with me.

Q. I see, and what do those men who work with you do?

A. Dump flour, handle flour, unload cars, receive, help in the operation of the machinery.

Q. Who in the plant is responsible for the cleaning and sanitation conditions?

A. Everyone in the plant is.

Q. By everybody in the plant is responsible, what do you mean by that?

A. Each one in the plant, each individual has

(Testimony of Joseph W. Mulvaney.)

been notified and told that whenever he sees anything that is wrong, to report it or stop it immediately himself to take care of it.

Q. I see. And whose duty is it to see that these things are done? [294]

A. Well, it is the individual's duty if he has the time to do it. If it is something that is a major operation then it would have to be kicked back and we close down and do it.

Q. And what specific instructions have been issued, if any, relative to the control of flies and moths or filth and so on?

A. If there is any noticeable, it is reported to me and I see that that area is sprayed immediately provided it is possible because of operations.

Q. How long have those instructions been in effect, Mr. Mulvaney?

A. Ever since I have been there.

Q. Over six (6) years, is that right?

A. Yes.

Q. And were those instructions in effect and were you carrying out those instructions in June and July of 1951?

A. To the best of my knowledge and ability, yes.

Q. By the way, were you here yesterday when Mrs. Dicecco testified? A. I was.

Q. And do you recall her testimony when she said that on occasions she picked up macaroni off the floor and put it in a bag, did you hear that?

A. She—her statement was that she was told to

(Testimony of Joseph W. Mulvaney.)

pick [295] the macaroni off the floor and put it in containers.

Q. I see, what containers was she told to put it in?

A. At the time she worked there as far as I know she wasn't told to put any macaroni off the floor into containers. That is swept up and goes into hog food.

Q. Swept up and what?

A. Goes into hog food.

Q. Into hog food? A. That is right.

Q. Do you have some sort of container, box or package that you put that in?

A. It is put in a paper bag in a garbage can and removed to the basement and a man picks it up. It is tied.

Q. And those instructions are the same instructions that all employees have?

A. That is right.

Q. Are you familiar with the general products, process of production of macaroni and spaghetti and noodles carried on by Golden Grain Macaroni?

A. I am.

Q. By the way, Mr. Mulvaney, you indicated that you were in charge of production. Who is the general manager of the plant out there?

A. Mr. Dedomenico.

Q. Mr. Dedomenico. And in his absence who is in [296] charge of the plant and production?

A. Well, I am in charge of production insofar as the making of the paste itself is concerned.

(Testimony of Joseph W. Mulvaney.)

Then there is a girl in charge of shipping and packaging down there on the second floor.

Q. Is Mr. McDiarmid the manager in Mr. Dedomenico's absence or——

A. I never understood it that way, no. It was sort of a share deal amongst all of us.

Q. And what were Mr. McDiarmid's duties in the absence—what were Mr. McDiarmid's duties out there?

A. To run the office and run the sales end of it.

Q. Mr. McDiarmid was in charge of the sales end?

A. Yes, he was.

Q. And in the absence of Mr. Dedomenico what was Mr. McDiarmid's duties?

A. Well, the same thing practically except that he was more around the building. I don't mean—I mean he was on the premises more when Mr. Dedomenico was gone.

Q. Well, on any occasion when any requests were made for inspection or anything like that when Mr. Dedomenico was present, what would you do?

A. Well, I'd have nothing to say about it. It would never reach me. [297]

Q. Well, when Mr. Dedomenico was absent my question was, what——

A. Oh, well, in that case I still don't feel that I can assume that responsibility.

Q. Would you contact somebody?

A. I would call him myself.

Q. Mr. Dedomenico?

(Testimony of Joseph W. Mulvaney.)

* * *

A. (Continuing): Yes, I would, I would contact Mr. Dedomenico.

Q. On July 18th of 1951 were you contacted by Mr. Shallit and Mr. Allen relative to an inspection they desired to make of the premises?

A. I was contacted by them through the secretary.

Q. Oh, I see. They didn't come down to see you?

A. I never went up to the third floor to my knowledge.

Q. The third floor? A. Production floor.

* * *

Q. Mr. Mulvaney, calling your attention particularly now to the period of June of 1951, was Mr. Dedomenico present at that time—excuse me, July of 1951? [298]

A. I couldn't say as to whether he was there part of July of 1951.

Q. Was he there on July 18th or 19th of 1951?

A. No, he was not.

Q. Do you know where he was?

A. He was in San Francisco.

Q. Do you recall whether or not he left for San Francisco in the latter part of June of 1951?

A. I think that is correct.

Q. Do you recall whether or not at the time he left there had been anything done relative to the cleaning of the equipment in the plant?

A. Just a day or so before he left the entire

(Testimony of Joseph W. Mulvaney.)

flour assembly line all the way through was cleaned out.

Q. You say you cleaned out the assembly line all the way through. Can you start with the place where the flour was put in. Take this pointer here and start where—your general process of cleaning that was followed by you when you cleaned up the plant in June of 1951.

A. We started specifically at this point here (indicating sketch).

Q. And that is the hopper?

A. The hopper.

Q. I see. What did you do and explain in detail what was done. [299]

A. That was vacuumed out completely of all flour and carried on through the whole system, completely vacuumed out of flour so there was nothing in there in the way of flour or debris of any kind.

Q. You say the whole system, you mean the hopper? A. The hopper, the screw here.

Q. The elevator, the screw?

A. Into the elevators and buckets, into the main storage bin. The screw that runs across the top of it, the screw at the bottom of it, and then through the trap bottom of the final elevators that take it up to be carried over to the mixer.

Q. I see.

A. That was all vacuumed clear of flour and then paint brushes were taken and spray was

(Testimony of Joseph W. Mulvaney.)

painted on the entire interior completely all the way through.

Q. By all the way through you mean the entire system was painted that you just finished vacuuming out? A. That is right.

Q. And you painted it with a spray?

A. With a spray.

Q. What type of spray did you use?

A. I am not too familiar with the name. It is some type of spray—well, it is sold by United States Insecticide. They advocate it. [300]

Q. Do you know whether or not it is that two per cent (2%) chlordane spray that Mr. Shallit referred to? A. I couldn't say.

Q. And what is the purpose of using that spray now?

A. Well, in the spray itself, when you are spraying the only thing you actually kill is a live moth. Any larvae or anything of that type unless you come in actual contact with a wetness of the spray it doesn't seem to have any effect on it. That is the reason that I do use the brushes to paint the whole thing.

Q. You use the brush instead of spraying it on for that purpose?

A. So if there is any crevice or anything it can run in there.

Q. And you did that throughout the entire system? A. That is correct.

Q. I see. Now what else did you do or was done

(Testimony of Joseph W. Mulvaney.)

under your direction at that time relative to cleaning up the place?

A. Well, during the period of that month?

Q. During the month of June or the month of July what followed?

A. Well, the month of June or July, either would be correct, the trays are all gone over and cleaned.

Q. What did you do between the trays? [301]

A. Use an air gun, blow them out completely in all the cracks where your screen and wood come together and then they are sprayed directly with a fine hand spraygun. Before we got that gun they were painted with a brush.

Q. You used a hand spraygun on all the trays. And what else was done relative to cleaning the plant at that time?

A. Well, it is just general cleaning which goes on continually. There is painting, always painting to do, always cleaning to do.

Q. Well, will you describe in detail what you actually did from the latter part of June through July of 1951, each day, relative to the cleaning?

A. I don't think I can do that.

Q. Well, can you tell us—I don't mean what you did on any one particular day, but generally during that period of time what did you do, Mr. Mulvaney?

A. Well, the floors are always a problem because you can sweep and right behind you is dust again so naturally that is something that is being taken care of all the time.

(Testimony of Joseph W. Mulvaney.)

Q. You swept the floors every day, is that correct? A. That is right, several times.

Q. What else is done?

A. The flour tank outside gets vacuumed off at [302] least once a week.

Q. And what else was done?

A. Well, any drier that I check that needs cleaning or painting would be taken care of.

Q. When you check the driers now, what would you do to check them and what would you do when you found anything there?

A. The first thing I do is to gas them. In other words, to close the drier up and spray it because it doesn't do you any good to start cleaning if there is a live moth in there and you disturb him, he is gone. First thing you do is kill what is in there with a spray and then go in and clean and vacuum, and if it needs painting, paint it.

Q. And what determines whether or not it needs painting?

A. Well, I determine that by whether I think it is in a condition where it does need painting.

Q. What is the condition that makes you determine that?

A. Well, if the wall is marked extremely much, or something like that, or if the paint maybe is peeled or if anything like that happens or something happens to rub against there like grease from a motor, you can't remove that.

Q. And the spray that you use in the drier is used [303] for what purpose there?

time is spent in percentage in proportions spent in (Testimony of Joseph W. Mulvaney.)

A. Used to kill any insects.

Q. And more particularly, this Mediterranean Moth, flour moth?

A. That is the big problem, yes.

Q. Now, in the elevators that are used in the Golden Grain Manufacturing Company, what process do you use to clean or fumigate those?

A. Well, they are opened up. They are made in such a way they can be opened up on the sides and they are all brushed down with a dry brush prior to spraying them or painting them with a spray, and the residue that is brushed down is picked up with a vacuum.

Q. And is that the same procedure that was followed in June and July of 1951?

A. That is right.

Q. As a matter of fact, is that a part of the standard procedures that you use out there?

A. That is correct.

Q. Can you give us any estimate as to how much cleaning related to the production time?

A. Oh, I'd say close to half.

Q. Mr. Mulvaney, are you familiar with the general procedures of production and the amount of flour that is [304] used in the production and so on?

A. Roughly, yes.

Q. What amount of flour would be used by the Golden Grain Manufacturing or was used by the Golden Grain Manufacturing for the production in July of 1951?

(Testimony of Joseph W. Mulvaney.)

A. Well, it would be a matter of pencil and paper, but I figure we run around from fifty-three to fifty-five hundred pounds (5300 Lbs. to 5500 Lbs.) of flour through per eight (8) hours.

Q. About fifty-three hundred to fifty-five hundred pounds (5300 Lbs. to 5500 Lbs.) of flour each eight (8) hours? A. That is right.

Q. And were you in production just eight (8) hours a day during that time?

A. I am not sure. I think during that time we were manufacturing for the Army and there could have been two (2) other shifts working. I wouldn't say for sure, especially at the first part of that period.

Q. So you might have been working three (3) twenty-four (24) hours a day?

A. That is possible.

Q. And if that is true, then roughly running through around one hundred twenty-five thousand to one hundred thirty thousand pounds (125,000 lbs. to 130,000 lbs.) of [305] flour each day?

A. That is fairly accurate, yes.

Q. Now, Mr. Mulvaney, based upon your experience now as the production end of this business, are you familiar with the general characteristics and life cycle of the moth?

A. To a certain extent, yes.

Q. Can you relate to us what your experience has been relative to that?

A. I know most of my experience is the fact that they multiply very fast and I don't know, the

(Testimony of Joseph W. Mulvaney.)

life cycle is only what I picked up since I have been sitting here, which I don't know anything about, but I do know one day you don't see them and the next day you do.

Q. And after you make a through cleaning as you have testified to here, in June or July of 1951, would moths appear shortly after such cleaning?

A. That is possible, sure, because you'd have to clean the whole building at one time and you couldn't do that.

Q. And do you recall at this time, sir, how soon after this cleaning that moths again appeared, or do you know? A. I don't know.

Q. Now this total amount of flour that you referred to, does that all pass through this same procedure, go into [306] the hopper through the conveyor and elevator system and so on?

A. That is right.

Q. All the flour goes through that same identical process, is that right? A. That is right.

Q. Do you have occasion, sir, to inspect the flour that goes into the production at the Golden Grain Company?

A. I do in so far as the sacks themselves are concerned.

Q. Did you in July of 1951 observe those sacks of flour that were used in production?

A. I did, yes.

Q. Can you state whether or not in your experience for the time you have been there, that you have

(Testimony of Joseph W. Mulvaney.)

found flour sacks and flour used in raw material to be free from any insects or moths?

A. To the visual eye, yes at times.

Q. And what occurs after the flour say is there for awhile?

A. I don't know what you mean by that.

Q. Well, with relation particularly to the existence or nonexistence of moths in the raw flour, can you tell us what happens when you get the raw flour in?

A. Well, it is possible that there is infestation in [307] the flour. It has been proven that, I think, that there is such a thing.

Q. Do you occasionally find moths in the boxcars in which the flour came into the plant?

A. No, I can't say that I have.

Q. But you did find some on the sacks of flour themselves? A. Yes.

Q. Now, in the process of production is any attempt made to sift out the moths or other contaminating features?

A. Well, yes. In the first principal of the whole thing is that your sack is swept off or dusted off.

Q. Yes?

A. On the outside and then is dumped.

Q. Yes?

A. Then it goes through your two (2) different screens.

Q. Why do you sweep it off or dust it off on the outside?

A. Because of particles that may be adhering to the outside.

(Testimony of Joseph W. Mulvaney.)

Q. I see, and is that the same procedure that was followed in July of 1951? A. Yes, sir.

Q. Well, after you dust off this sack and shake it off, [308] or clean it off you then dump it; in it goes into the hopper. Then is there any other sanitary method used to prevent anything from being in the product?

A. There are two (2) wire mesh sifters.

Q. Two (2) wire mesh sifters? A. Yes.

Q. Where are they located?

A. One is located before it goes into the storage bin and one located just before it goes into the mixer.

Q. What is the purpose of these sifters here?

A. To take out any particles or foreign substance.

Q. How large a screen is it, or how fine a screen is it, is perhaps a better term?

A. Well, I couldn't say. I mean it is a very fine screen.

Q. Is it a twenty (20) mesh screen, or do you know?

A. I don't know how you classify screens.

Q. Extremely fine, though?

A. That is right.

* * *

Q. (Continuing): Well, are the holes in the mesh visible to the naked eye? [309] A. Yes.

Q. Now, in June and July of 1951, Mr. Mulvaney, did you observe the general sanitary conditions there in the plant itself?

A. Yes, I did.

(Testimony of Joseph W. Mulvaney.)

Q. Can you testify, sir, as to what those sanitary conditions were, whether it was sanitary or unsanitary?

A. To my knowledge they were sanitary.

Q. Were there present any moldy or decomposed matter in the processes of production?

A. No.

Q. Did you—were there a lot of flies present buzzing around? A. No.

Q. Any rats or mice present?

A. I didn't see any.

Q. Any evidence, any rat pellets or mouse excreta of any sort? A. No, sir.

Q. Mr. Mulvaney, do you recall the general characteristic as to the temperature, that is, the heat, humidity in Seattle at that particular time?

A. As I recall it, it was very warm.

Q. And based on your experience, what effect does that have on the life cycle of the moth? [310]

A. It seems to speed it up.

Q. You don't know how much it was speeded up or anything? A. No, sir.

Q. Do you know the length of time it would take the moth to emerge from the pupa stage to the moth stage? A. I do not.

Q. In your experience, sir, how soon after, say the elevators were cleaned, would this webbing appear?

A. Oh, I'd say within three (3) or four (4) days it would be possible.

Q. I see, and when webbing did appear, what

(Testimony of Joseph W. Mulvaney.)

would you do, what instructions were left with the employees as to what they should do?

A. That would be to give a general cleaning throughout the flour system.

Q. And during the period of June and July of 1951 were those the same instructions, sir?

A. That is right.

Q. And did you make inspections that often during the period of June and July of 1951?

A. No, not quite that frequently.

Q. How frequently would you make inspections?

A. Oh, I'd say about every week, six (6), seven (7) days, something like that. [311]

Q. Do you recall the date of the last inspection that you made prior to July, the 18th and 19th of 1951?

A. No, I don't.

* * *

Cross-Examination

By Mr. Sager:

Q. Mr. Mulvaney, as I understand this place was—this flour carrying equipment was cleaned out sometime in June just before Mr. Dedomenico left here?

A. That is correct.

Q. Can you fix that date any closer?

A. No, I can't make it specific.

Q. It was sometime in June, is that your understanding?

A. Yes, sir.

Q. And it hadn't been cleaned out, that is, this conveying system hadn't been cleaned out between that time and the inspection by the two (2) inspectors?

(Testimony of Joseph W. Mulvaney.)

A. Had been cleaned out? No, sir.

Q. You speak about painting from day to day and time to time. Are you talking about painting this spray or painting paint?

A. It could apply to either one because they are both used, but at that instance I was talking of paint.

Q. You stated that this Mediterranean moth is your [312] big problem down there. That is the inspectors were talking about. Do you recognize that as the Mediterranean moth or——

A. With my knowledge yes, I do.

Q. At any rate it is the moth that you have there all the time? A. Yes, sir.

Q. And the moths are the moths that they were finding on the day of their inspection?

A. That is correct.

Q. It is the same type of moth all the time?

A. Yes.

Q. You were present during part, at least part, of the inspection that these two (2) inspectors were making there? A. Yes, sir.

Q. They started out with the hopper and then went to the conveyor, the screw conveyor underneath the hopper and then through the elevators and the other conveyors as they testified?

A. Yes, sir.

Q. Were you there during the course of that?

A. I was in the building, yes.

Q. And they spoke to you sometimes shortly

(Testimony of Joseph W. Mulvaney.)

after starting their inspection, didn't they, [313]
or——

A. It was practically, I think immediately as they—just as they started their inspection.

Q. They told you what they had found already and suggested that you close down the operation until they completed their inspection?

A. Yes, sir.

Q. And in view of the large amount of insects and evidence they were finding said that you probably would want to clean it out before you resumed operations? A. That is right.

Q. And as a result,—and you saw what they were finding there, did you? A. Yes, sir.

Q. And they were finding these moths and webbing and larvae and all these——

A. I saw the moths.

Q. Well, didn't you see this webbing and that sort of thing that they——

A. No, I didn't follow them all the time.

Q. Did you ever observe this large area of webbing on the, and cocoons on the wall, that is shown in this picture, Exhibit 15?

A. They called my attention to that, too, I think.

Q. They called your attention to that?

A. Yes, sir. [314]

Q. It was quite visible? A. Yes, sir.

Q. Apparently—well, that had been there some time, had it not?

A. I couldn't say as to the length of time.

(Testimony of Joseph W. Mulvaney.)

Q. You know these cocoons don't form over night?

A. I couldn't say as to that either.

Q. You hadn't observed that up there before?

A. Oh, yes.

Q. Oh, yes?

A. It has been brushed down before.

Q. This same bunch of stuff had been brushed down?
A. It couldn't be the same bunch.

Q. Well, this moth, this Mediterranean moth, was present around the factory practically all the time, wasn't it?
A. To a certain degree.

Q. To one degree or another? I mean sometimes worse than others, but it was always present?

A. That is right.

Q. The live moths were always present to some extent?
A. To some extent.

Q. And they came in contact with the food product and drying rooms or could come in contact with it; they were in that area?

A. That is possible, yes. [315]

Q. I understood you to say that you supervised these employees, that is, all of them in the plant, is it nine (9) of them?

A. That is excluding the office. I have no jurisdiction over that at all.

Q. You have nothing to do with the sales force I take it?
A. No, sir.

Q. But in the actual operations, maintenance of the plant, production, you are in charge of those many employees?

(Testimony of Joseph W. Mulvaney.)

A. That is correct, under Mr. Dedomenico if he is there.

Q. I understand he is the boss over everything?

A. That is correct.

Q. By the way, who hires and fires this help?

A. Mr. Dedomenico.

Q. Who determines what products are going to be produced at a certain time, or how much?

A. That is determined by either he or myself, according to what the sales girl or the shipping girl needs.

Q. And when Mr. Dedomenico is in town, what part does he take in the actual management or operation of this plant?

A. Just on the business end of it is all.

Q. Is he in the plant? [316] A. Oh, yes.

Q. I understand he hires and fires the employees? A. Yes, sir.

Q. Did I understand you to say Mr. McDiarmid was sales manager and office manager?

A. No. He—sales manager is his official title. But if Mr. Dedomenico is not there he usually takes over the office in his absence.

Q. In other words he operates the business end of the business in the absence of Mr. Dedomenico?

A. Insofar as sales and such is concerned. I don't think he has anything to do with the buying or anything like that.

Q. You say that he is around the premises more in the absence of Mr. Dedomenico?

A. Yes, sir.

(Testimony of Joseph W. Mulvaney.)

Q. That is for the purpose—that is because of his increased duties in the absence of Mr. Dedomenico?

A. Well, yes, due to the fact that he can contact the salesmen if they want to refer back to the office, why he is there. They don't have to hunt for him. If Mr. Dedomenico is there, why he can answer the question.

Q. When Mr. Mulvaney—is there any fixed time in the course of the day, the eight (8) hours' work to do up, [317] do the cleaning?

A. Generally cleaning all the time, but the girls have been instructed to close down from fifteen (15) to twenty-five (25) minutes before quitting time and clean up around their own particular area that they are working in.

Q. And that cleaning constituted sweeping up this large amount of flour that would accumulate on the floor and that sort of thing?

A. Whatever happens to be there, yes.

* * *

Q. They didn't go into this machinery and clean out in there, did they? A. No, sir.

Q. These girls? And of course, all of this food or flour conveying system was all encased and that had to be taken down to get into it to clean inside?

A. That is correct.

Q. The women didn't do that?

A. No, sir.

* * *

(Testimony of Joseph W. Mulvaney.)

Redirect Examination

By Mr. Yothers:

Q. How long does it take to do the type of cleaning, [318] for example, that you testified to that was done in the latter part of June and first of July of 1951?

A. Well, it takes three (3) men about twelve (12) hours to clean out the elevators, the bin and sifter, that entire——

Q. And to clean out the drying room and things of that sort, is that done on stated times, or——

A. No, that is done during working hours as it is needed or as they are emptied out.

Q. So that is cleaned then, would you say, every day? A. That would be very close to it.

Q. Now, does anyone clean any part of this equipment that they are working on? You say they close down fifteen (15) to twenty-five (25) minutes—do they clean their machines they are working on or just clean the area around the machine?

A. You mean in the evening when they shut down?

Q. Yes.

A. They clean the machine and the area around.

Q. And how often is that done?

A. That is done every evening.

Q. I don't believe I asked you, Mr. Mulvaney, how often do you spray for this moth particularly

(Testimony of Joseph W. Mulvaney.)

during the period of time, June and July of [319] 1951?

A. Well, it is—I couldn't say. It depends upon the heat and if you notice moths, why then you spray. If you notice them more the next day you have got to spray again. You spray sometimes twice a week, sometimes once a week, depends on the necessity.

* * *

Q. Well then, I take it during June and July of 1951, do you know how often you sprayed during that period of time?

A. I couldn't say but I'd say roughly once a week. [320]

* * *

VINCENT MICHAEL DEDOMENICO

being first duly sworn on oath was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your name, please.

A. Vincent Michael Dedomenico.

Q. And are you related to the defendant Paskey Dedomenico? A. Yes, sir.

Q. Where do you reside, sir?

A. 16845 Barbara Drive, San Leandro, California.

Q. Do you have any relationship with the Golden Grain Macaroni Company, sir?

(Testimony of Vincent Michael Dedomenico.)

A. Yes, sir.

Q. In what capacity?

A. I am secretary-treasurer of the corporation. I am general manager of the San Leandro plant.

Q. Who owns the Golden Grain Macaroni Company, sir?

A. Basically it is owned by three brothers, Paskey, myself and my younger brother, Tom.

Q. And how long have you and the family been engaged in the manufacture of macaroni products?

A. Since 1912.

Q. And how long has Paskey been [321] engaged?

A. I don't know exactly. I know it is at least five (5) or six (6) years more than myself and I have been at it for seventeen (17) or eighteen (18) years.

Q. Are there any other stockholders or persons who have an interest in it?

A. Yes, there are two (2) or three (3) other stockholders.

Q. Are they all related to your immediate family?

A. Not all of them. Several are not related, and one is a cousin.

Q. Now, in June and July of 1951, do you know in what capacity Mr. Paskey Dedomenico served in it?

A. He is president of the corporation and general manager of the Seattle plant.

Q. Are you acquainted with the general office

(Testimony of Vincent Michael Dedomenico.)

setup and the various duties and responsibilities of Mr. McDiarmid and Mr. Paskey Dedomenico and Mr. Mulvaney in the Seattle plant, sir?

A. Yes, I have a working knowledge of it.

* * *

Q. And in June and July of 1951, sir, what capacity did Mr. McDiarmid play?

A. Sales manager.

Q. And as such what were his duties?

A. Well, he is in charge of all sales in this area. [322]

* * *

Q. Does he have anything at all to do with the production or the maintenance and operation of the plant of the Golden Grain Manufacturing Company here in Seattle? A. No, sir.

Q. What are Mr. Mulvaney's duties, sir?

A. Well, Mr. Mulvaney is, I would term production manager. I guess they call them foremen up here.

Q. What are his duties, sir?

A. Well, he is in charge of all production of macaroni products inside the plant.

Q. And was he in June and July of 1951?

A. To the best of my knowledge, yes.

Q. Do you recall when Mr. Dedomenico came down there to San Francisco, San Leandro in 1951?

A. I don't remember the day he arrived. I don't have a memory for dates.

Q. Well, can you tell us if it was before or after the 4th of July?

(Testimony of Vincent Michael Dedomenico.)

A. It was before the 4th of July, yes.

Q. And who was in charge of the plant, the factory, the warehouse, when Mr. Dedomenico was absent from the [323] city of Seattle, sir?

A. Well, I would have to assume. Not being here I don't know.

Mr. Sager: I object to that—

Q. Do you know—excuse me. You say you have a working knowledge of the relationship and the responsibilities of Mr. Mulvaney and Mr. McDiarmid and Mr. Dedomenico. Now, do you know who was in charge of the plant and the operations when Mr. Dedomenico was absent in July of 1951?

A. Well, Mr. Mulvaney would be in charge—

Mr. Sager: Just a moment. The witness already testified that not being here he didn't know, he would have to assume.

The Court: Well, I believe I will allow him to testify from his general knowledge of the business who would normally be. That is the point you are getting at, isn't it?

Mr. Yothers: Yes.

The Court: I will allow you to establish that although the means are a little devious. You may answer the question.

A. (Continuing): Well, Mr. Mulvaney would be in charge of production in the absence of Mr. Dedomenico, Paskey.

Q. As such would he be the custodian of the plant [324] down there? A. Yes, he would.

Mr. Sager: I object to that. I think that calls

(Testimony of Vincent Michael Dedomenico.)

for a conclusion, a legal conclusion of this witness.

The Court: Sustained.

Q. Mr. Dedomenico, have you had occasion to inspect various macaroni manufacturing plants throughout the United States?

A. Well, I have visited a lot of macaroni plants in this country.

Q. How many of them have you visited, sir, in the period of time——

A. I'd say at least twenty-five (25) or thirty (30).

Q. And are you familiar with the general conditions as to sanitation in those plants?

A. Well, I make an observation as I walk through the plants, yes, but I don't make a detailed inspection.

Q. And are you familiar with the conditions of sanitation of the Golden Grain plant here in the city of Seattle?

Mr. Sager: I think I will object to this comparison of this plant with other plants.

The Court: He is tending to get near that, but he hasn't yet. [325]

Mr. Sager: If he has some other purpose I will withdraw the objection, your Honor.

The Court: This question is proper, whether or not he is familiar with the sanitation methods employed in the Seattle plant.

Q. (Continuing): Are you?

A. Yes, I am familiar with them.

Q. Based upon your knowledge and background

(Testimony of Vincent Michael Dedomenico.)

and experience, Mr. Dedomenico, would you say that the Golden Grain Manufacturing plant was a sanitary or unsanitary plant?

Mr. Sager: I will object to that.

The Court: The objection is good.

Q. (Continuing): San Leandro, excuse me, I eral manager of the plant down in San Francisco, have you become acquainted—

The Court: He is the manager in San Leandro.

Q. (Continuing): San Leandro, excuse me I thought that was San Francisco. As the manager of the plant down in San Leandro, have you become acquainted with the general problems of production and sanitation, sir, in the manufacture of macaroni products?

A. Yes, I am very close to them.

Q. And have you been dealing with such problems for many years?

A. Well, there are constant problems in every macaroni [326] factory.

Q. And approximately how long have you been so engaged? Did you say seventeen (17) years?

A. Since 1933, that would be nineteen years (19).

Q. In your opinion, sir, is the plant, the Golden Grain Manufacturing plant here in the city of Seattle sanitary or unsanitary plant?

Mr. Sager: I will object to that question, your Honor.

The Court: Sustained on the ground it calls for an opinion and conclusion of the witness.

Mr. Yothers: I will qualify the witness, your

(Testimony of Vincent Michael Dedomenico.)

Honor, as an expert witness based on the background and experience dealing with questions of sanitation and manufacturing.

The Court: Disallowed.

Q. (Continuing): Have you become through your experience and background, sir—excuse me.

Mr. Yothers: May I address a question to the Court?

The Court: Yes.

Mr. Yothers: Is the ruling of the Court based upon the ground that the qualifications of an expert witness have not been established?

The Court: Yes. This man has testified he [327] is the secretary and treasurer of this corporation. It is true he has visited some twenty-five (25) or thirty (30) plants throughout the United States. I don't see that that qualifies him as an expert on sanitation.

Mr. Yothers: Well, perhaps, your Honor didn't recall the question I asked him in which he stated that he had been, is manager of sanitation and went through the plant for some nineteen (19) years and been acquainted and dealing with questions of sanitation.

The Court: Yes, but that question gets us into the question of comparison between the standards that are applied in one plant as opposed to those which are applied in another, and that is a field in which I will not allow you to enter. We are only concerned on what happened at this particular plant.

(Testimony of Vincent Michael Dedomenico.)

Q. (Continuing): Sir, do you occupy any official position in the National Macaroni Association?

A. Yes, I am a director of the National Macaroni Association.

Q. And what is that association, sir?

A. It is a group of macaroni manufacturers. It is a voluntary organization and it is probably joined by manufacturers [328] that represent eighty per cent (80%) of the production of macaroni in the United States.

Q. And does it concern itself with questions of sanitation and sanitary procedures and manufacturing procedures of macaroni as one of its problems?

A. Well, the association does not deal into sanitation.

Q. It does not? A. No.

The Court: May I ask a question? Have you, yourself, made an independent study of the problem of sanitation as it affects macaroni plants?

The Witness: As it affects macaroni plants generally, no. As it affects my own plant, yes, we study that thoroughly all the time.

Q. Having made, sir, a study also of the sanitation problems so far as it concerns the plant here in Seattle?

A. I am cognizant of what goes on up here and what the problems are.

Q. And how long have you been, have you had relationship with the Seattle plant?

A. Well, since we first purchased it in 1941.

(Testimony of Vincent Michael Dedomenico.)

The Court: How many times have you visited since 1941?

The Witness: I'd say once a year.

Mr. Yothers: At this time, your Honor, I [329] propose to propound the same question as to the opinion as to the sanitation procedures adopted and used by the plant in his opinion as to whether it is sanitary or unsanitary.

The Court: Don't be ridiculous, on a basis of a visit to the plant once a year. I will not allow you to pursue that any further.

The Witness: Well, it is more than a visit, your Honor.

The Court: I know it. I assume you make a complete inspection once a year, but it isn't sufficient, in my opinion.

Q. How long a period of time would you spend on those visits up here once a year?

A. I will be in the plant for two (2), three (3) or four (4) days, depending on how much time I have to spend here in Seattle, but I will be in every phase of the operation.

Mr. Yothers: I assume your Honor's ruling will be the same?

The Court: Same.

Q. Sir, during the period of time you have been engaged in the business and manufacture of macaroni products, have you become acquainted with the general characteristics of the Mediterranean flour moth? [330]

A. Yes, we have. I have, rather.

(Defendants' Exhibit A-2 marked for identification and admitted in evidence.) [337]

* * *

JOHN SPINELLI

being first duly sworn on oath, was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your name, please, sir.

A. John Spinelli.

Q. Where do you live?

A. 7966 Seward Park Avenue, Seattle.

Q. What is your occupation, sir?

A. I am a chemist for the Food Chemical and Research Laboratory in Seattle.

Q. Will you list your training and background and experience, Mr. Spinelli?

A. I have been working for the Food Chemical and Research Laboratory for about four and one-half (4½) years. I received my degree, I have a Bachelor of Science, from the University of Washington. I am a member of the American Chemical Society and a member of the Food Technologists.

Q. How do you obtain membership in the American Chemical Society?

A. Through experience in the chemical field and if you are qualified in—if you have a degree or have been a chemist for, I believe the requirements are from three (3) to five (5) years. There are

(Testimony of John Spinelli.)

various requirements, but [338] a degree is not essential as long as you have been in the field.

Q. And how do you acquire membership in the Food—what did you say it was?

A. Food Technologists.

Q. Food Technologists Society?

A. That is similar to the Society. It is through experience and schooling.

Q. And what are your duties as the chemist out there for Food Research and Analysis Company?

A. Well, mostly as an analyst. We do some development, some research.

Q. And are you familiar, sir, with the methods of analysis and tests run on food products such as macaroni products? A. Yes.

Q. And on other wheat semolina products?

A. Yes.

Q. Have you run an analysis of that sort, sir?

A. Yes, I have.

Q. And over what period of time have you done that? A. About four (4) years.

Q. Are you presently so engaged in that business? A. I am.

Q. And has that been before the Food Research Analyst [339] group during that period of time?

A. You mean with the corporation I am engaged with now?

Q. Yes. A. Yes, it is.

The Clerk: Defendants' Exhibit A-3 for identification.

Q. Handing you what has been marked as de-

(Testimony of John Spinelli.)

fendants' Exhibit A-3 for identification I will ask if you can identify that, sir?

A. Those are samples of cut macaroni that I obtained from your law offices for analyses, filth analyses.

Q. And when did you get those samples?

A. November 24, 1952.

Q. And what was the condition of the sack or bag at the time you received it?

A. They were in good condition, they were all sealed, the bag was sealed and the contents were not opened. I mean the samples in there were all sealed and appeared in good condition.

Q. Did you have some sort of a marker or sticker or identifying tag on them?

A. Well, the seal bore the seal of the Food and Drug Administration and the samples were numbered sub 1, 2, 3, etc., whatever the case may be. There were more subs in some [340] samples than there were in others.

Q. And was there any markings or identification on the seal of the Pure Food and Drug Administration?

A. Yes, they were marked. They had a date; the date in the case of the macaroni products was 11/14/52. The inspector had his signature on it which was Menno D. Voth and, as I said—

Q. Did it have some identification or code number on it?

A. Yes, they were coded, Count 2 and Count 3.

(Testimony of John Spinelli.)

I received Count 2 to Count 6 and each Count was coded with an individual code.

Q. What was the code number on that Exhibit A-3?

A. This particular one that you have here?

Q. Yes. A. 30-340 W. [341]

* * *

Mr. Sager (Continuing): We will stipulate that these packages are the portions of the original samples taken which were turned over to them upon their command.

The Court: Very well.

Mr. Yothers: I will offer in evidence then A-3, A-4, A-5 and A-6, your Honor.

The Court: They may be received and marked.

(Defendants' Exhibits A-3, A-4, A-5 and A-6 marked for identification and admitted in evidence.)

Q. Would you take the Exhibit A-4, sir, and break the seal? By the way, who placed that seal that is on there now? A. I placed it on.

Q. When did you place that seal on?

A. After the samples were analyzed.

Q. And have these samples been in your possession all the time, sir?

A. Yes, they have, in the laboratory. [342]

Q. Have they at any time been in the possession of the defendants or anyone other than yourself since the date you received them?

A. No, sir.

(Testimony of John Spinelli.)

Q. Will you break the seal.

* * *

Q. (Continuing): And will you take from that sample A-4, sir, one (1) of the sub portions. Now, are there other portions of that sample there in A-4?

A. I believe there are six (6) of them, no, five (5).

Q. Besides that one?

A. Four (4) besides this one.

Q. Well, is that sub sample that you have received there, is that in the same condition as it was at the time you received it from our office?

A. To my knowledge it is. It should be in the same condition. I see that I opened this one to take out part for analysis.

Q. And are the other sub portions of the sample—

A. Some of the other ones haven't even been opened. I opened only two (2), I think, in this one. That is right.

Q. Did you have occasion, sir, to run any sort of tests or analyses of the samples contained therein, A-3?

A. Yes, I ran some analyses on all the products that were submitted to me but because of the length of time I had, I [343] was only able to analyze portions of each sample.

Q. What portion of each sample did you analyze, sir?

A. Well for example, on this particular sample

(Testimony of John Spinelli.)

here I—for my sample I took about a hundred and fifteen grams (115 gm.) out of two (2) subs, sub 2 and sub 5.

Q. And what sort of a test did you make on it, sir, and will you describe the process that you used?

A. I ran an insect fragment test. The method is described in the A.O.A.C., Association of Official Agricultural Chemists. I used—

Q. Is that the same type of test, sir, do you know, that is used by the Pure Food and Drug Administration?

A. I believe it is. Do you want me to go into detail?

Q. Yes, will you describe it please?

A. You weigh out a sample. Your sample should weigh two hundred twenty-five grams (225 gm.). You should have at least a fifteen hundred millimeter (1500 mm.) beaker clean. You place your sample in this beaker. If the product is spaghetti, you should break up your product so you can facilitate digestion.

You take about a liter of one or two per cent (1% or 2%) hydrochloric acid. You should heat your hydrochloric acid, your solution of hydrochloric acid and pour it over your sample. Then you should cautiously bring your sample to a boil, stirring, until you have finally [344] digested your sample and that requires, oh, probably two (2) hours, one (1) or two (2) hours. You should then cool your sample. You should then neutralize your

(Testimony of John Spinelli.)

sample with sodium hydroxide, usually a very concentrated solution of sodium hydroxide, about one to one (1 to 1). That will—the idea is you will further digest this sample with a pancreatin solution. You should bring the pH of your sample to eight (8).

Q. What do you mean by pH?

A. I will say acidity, between seven (7) and eight (8). Then you buffer your solution further with sodium phosphate.

Q. What do you mean by buffer the solution?

A. When you add pancreatin solution it will change the pH of the solution, that is, it will change the acidity. In order to get maximum digestion you want to maintain the pH between seven (7) and eight (8), and that is what a buffering solution does.

After the sample is cooled you should again heat it to about forty degrees (40°) centigrade. You add a pancreatin solution, about five grams (5 gm.) of a solution of pancreatin per your half pound (½ lb.) sample. You maintain this for about three (3) hours at forty degrees (40°) centigrade. At that time your sample should be pretty well digested. You then bring your sample to a boil, cool it again and transfer it quantitatively to a Wildman [345] flask. Add about forty millimeters (40 mm.) of gasoline and trap off your insect particles. The object of the gasoline is to float out your insect particles. You trap them off onto a ruled filter paper and if you have done everything all right you shouldn't get too much other material besides

(Testimony of John Spinelli.)

insect fragments, probably a few flakes of floury material, and then you are ready to make your microscopic test.

Q. I see. Now, you add the gasoline and that floats off any insect fragments, you said, and put that on what? A. Filter paper.

Q. And what do you do with the filter paper?

A. Then you examine the filter paper under a microscope using—you can scan that filter paper with about a forty (40) power microscope, wide angle.

Q. And is that the process that you used on this sample A-3 and on the other samples A-4, 5 and 6?

A. Yes, sir.

Q. What were the results of the sample that you ran and analyses that you made, sir, on sample A-3 which is the one designated by code 30-340 L?

A. 30-340 L, cut macaroni. I found six (6) insect fragments and I found a couple of pieces of larvae that were not imbedded in the product. I found no rodent contamination and I found some gritty particles.

Q. Now you said you found two (2) pieces of larvae [346] not imbedded in the product. What is the significance of that, sir?

A. Well, if I was to draw any conclusions, it wasn't, obviously it wasn't mixed in with the paste that you make this macaroni from. It either had to come in there from, either had to come in there from some other source—I am not sure it could have come in there when it was in the plant. I

(Testimony of John Spinelli.)

mean, it could have developed in there as far as that goes. That is the only significance I can attach to that.

Q. It wasn't in the product itself, it didn't get in there as a manufacturing product?

A. No. I took this sample, put in the hydrochloric acid and immediately I saw these. They were visible to the eye. I didn't have to use a microscope.

Q. And as to sample A-4 which is code No. 29-871, the elbow macaroni, sir, did you make a test upon that?

A. Yes, I found eight (8) fragments.

Q. Excuse me. Did you make the same test?

A. Yes, the same test on all of these.

* * *

Q. And what were the results of that test, sir?

A. By the way, these results are on two [347] hundred twenty-five grams (225 gm.) of product. Eight (8) fragments in that sample. There was no rodent contamination and the product in this case was not in the best of condition because it had evidences of mold on it. Probably if I had run a moisture on it I would have found that it was probably a little high. I am guessing at that, but mold apparently developed there.

Q. When did the mold develop, sir?

A. Oh, I don't know. I haven't any idea when this mold develops. It shouldn't develop. If the product is in good condition dry mold shouldn't

(Testimony of John Spinelli.)

develop. I believe macaroni products run about twelve per cent (12%) moisture, I don't know, something in that order, and I don't believe any mold should develop on that.

Q. And as to sample A-5 which is——

A. What is the code number?

Q. Count 4, 29-872.

A. Three (3) fragments, no rodent, no miscellaneous.

Q. And as to sample A-6 which is 29-477, Count 4—excuse me, Count 5?

A. Five (5) fragments, no rodent contamination, some particles of grit.

Q. Was there another sample there?

A. Yes, I have Count 6.

Q. When you speak of fragments do you mean insect [348] fragments or insect and larva fragments?

A. Insect fragments. Fragments that I can identify by some characteristic.

Q. You say you can't?

A. That I can identify through some characteristics you know, by which you may identify insect fragments.

Q. Did you bring them all down?

A. Yes, all but Count 3. That was a product that was somewhat moldy.

Q. Oh, excuse me. Well then, A-6 is Count 6 which is 29-478, is that correct.

A. That is what I have here, yes.

(Testimony of John Spinelli.)

Q. And the sample that you did not bring down, A-3, is 29-871? A. That is right.

Q. The one that was moldy? A. Yes.

Q. Sir, did you also have occasion to make an analysis of samples of flour and semolina?

A. Yes.

Q. And where did you obtain the samples of those, sir? A. From your law offices.

Q. Did you have any residue remaining from those [349] samples?

A. I did not bring them with me. I have them at the lab.

Q. What was the condition of the samples at the time you received them as to the sack, bag, and so on?

A. They were sealed. They appeared to be in good condition.

Q. And what was the nature of the seal? Did it have the seal on it?

A. I can read you the nature of the seal. Here, I have copied it down here. They also had the Food and Drug Administration seal. They had the initials FD-415-A, Federal Security Agency. They had the sample number, the date 11/19/52. That was the same date on all the flour samples. The inspector, Menno D. Voth.

Q. How many of those samples did you receive, sir? A. I think there was eight (8).

Mr. Yothers: May we have the same stipulation, Mr. Sager, as to these samples, that they were por-

(Testimony of John Spinelli.)

tions furnished to us by Mr. Monfore in response to our request?

Mr. Sager: I am willing to stipulate that they were the samples you obtained from the Food and Drug Administration. I'd like him to designate, if he can, the sub sample numbers. [350]

Q. Would you do that, sir?

* * *

Q. (Continuing): Excuse me. Referring back to your tests and reports of Count 6, which is code number 29-478 L——

A. Five (5) fragments, no rodent contamination, some particles of grit.

Mr. Sager: We have that. I have that same.

A. (Continuing): I believe it was the same for both Counts 5 and 6.

The Court: That is what my notes reflect, same for Counts 5 and 6.

Mr. Sager: What are the sample numbers then, Mr. Spinelli, on those two (2) of five (5) fragments?

* * *

Mr. Sager: You have two (2) samples in which you say you found five (5) fragments and some filth.

The Witness: That is correct.

Mr. Sager: What are the sample numbers?

The Witness: The sample number on Count 5 is 29-477. That is elbow macaroni, six (6) subs. [351]

* * *

Q. And the other is 29-478 L?

(Testimony of John Spinelli.)

A. That is right, twelve (12) subs.

Q. And by subs you mean sub portions of the sample?

A. By a sub I mean something like that. In other words, there will be five (5) of these packages in one sample.

Q. Now, referring now to your analyses you made of the flour, sir, as to the first sample will you give the sample number and the results of your analysis?

A. The bag was marked "Selected Durum Durella Semolina No. 1, General Mills, Minneapolis, Minnesota. Taken from 89 100 paper bags located in basement. 9 subs Y."

Q. And did you run an analysis of that flour?

A. Yes.

Q. Is that the same type of analysis that you make for macaroni products?

A. Actually it is the same type, yes.

Q. And is it the same type of analysis that is made and used by the Pure Food and Drug Administration for their test?

A. I believe so.

Q. What was the result of the analysis of that sample did you receive, sir?

Mr. Sager: Pardon me. Would you give [352] the sub sample number on that?

A. I used one hundred grams (100 gm.) in all cases here when I am talking about flour. The subs are 1, 3, 4 and 9.

Q. What were the results of that analysis?

A. On that particular sample I found seven (7)

(Testimony of John Spinelli.)

fragments, no evidence of rodent contamination, some particles of grit.

Mr. Sager: That is on the entire group of subs?

The Witness: That is of a composite of those subs.

Q. And by fragments you are referring to parts of the insect or larva?

A. Yes, I found some parts of larva in that one that I could identify.

Q. The total of that was seven (7)?

A. Yes.

Q. Now as to the next sample?

A. The next sample was labeled "Gold Medal Durum Flour, General Mills, Minneapolis Minnesota. Taken from 212 100 pound bags in basement. 14 subs Z."

Q. How many samples, or what was the composite?

A. I took some out of each sub label 2, 3, 4, 5 and 11. [353]

Q. What were the results of those analyses, sir?

A. No contamination of any sort.

Q. Any insect or larva or rodent?

A. No, sir.

Q. And as to the next sample that you took?

A. Next sample was labeled, "this sample is a composite taken from four (4) bags of semolina located next to the hoppers which are on the second floor and part of the flour conveying system." These bags were labeled "Durum Durella Semolina No. 1, General Mills, Minneapolis, Minnesota."

(Testimony of John Spinelli.)

Q. How many subs did you take?

A. One sub.

Q. What amount?

A. This analysis was on one hundred grams (100 gm.).

Q. And what was the result of that analysis?

A. Two (2) insect fragments, no evidence of rodent contamination, some particles of grit.

Q. And as to the next sample?

A. "This sample is a composite from fifteen (15) bags located on the second floor by the noodle manufacturing equipment" labeled "Gold Medal Durum Patent Flour, Unbleached, General Mills, Minneapolis, Minnesota." One (1) sub, one (1) fragment, no evidences of rodent contamination, no grit.

Q. As to the next sample?

A. "Gold Medal Semolina No. 1, General [354] Mills, Minneapolis, Minnesota, taken from forty-one (41) one hundred pound (100 lb.) paper bags located in basement." Six (6) subs.

Q. And how many did you use in your analysis?

A. One hundred grams (100 gm.). Subs were taken from 2, 3, 4, 6.

Q. What was the result of that analysis?

A. One (1) fragment.

Q. And as to——

A. No rodent or particles of grit.

Q. And the next sample?

A. "Cavalier Extra Fancy, No. 1, Wheat Semolina, North Dakota Elevator Co., Grand Forks, North Dakota. From twenty (20) one hundred

(Testimony of John Spinelli.)

pound (100 lb.) paper bags located in basement.”

Four (4) subs.

Q. The result of that?

A. No contamination of any sort.

Mr. Sager: How many subs did you examine?

A. (Continuing): Oh, excuse me, 2, 3 and 4.

Q. And the next sample?

A. “Excello Durum Patent Flour manufactured by the North Dakota Elevator Co., Grand Forks, North Dakota, were taken from twenty (20) one hundred pound (100 lb.) bags in basement.” Four (4) subs, no contamination.

Q. How many subs, which ones? [355]

A. 2, 3 and 4.

Q. And the last analysis?

A. “Sunrise Macaroni, Spokane Flour Mills, Spokane, Washington, taken from twenty (20) one hundred pound (100 lb.) bags located in basement.” Four (4) subs. No contamination. The subs analyzed are 1, 2 and 3. In all cases when I am talking there, I have taken a composite from these. I haven’t analyzed the whole sample.

Q. As a result of your analyses, sir, what were your conclusions?

A. What do you mean, my conclusions?

Q. Well, as to the contamination?

Mr. Sager: I object to any conclusions other than what he found and he has testified to that. I don’t know what other conclusions he is authorized to make.

(Testimony of John Spinelli.)

The Court: His conclusions are reflected in his testimony, aren't they, what he found?

Mr. Yothers: I don't believe so, your Honor, in this respect, that this man is a qualified expert engaged in making these various analyses and familiar with the rules and regulations of the Pure Food and Drug Administration, and I think he is qualified to make a determination and interpretation of his analyses in the light of the [356] matter in question here. That is, whether or not they contain filth, and if the matter they do contain is filth.

The Court: All right, I will allow you to pursue that.

A. I would say in view of the nature of the product I wouldn't consider them filthy.

Q. What do you mean by the nature of the product?

A. Well, it is a type of product you are analyzing. In other words, if you went out in a grocery store or bought a particular type of product and analyzed it for insects, I could think of several products that would have considerably more insect fragments than what I found here. I mean, when you interpret these results you have to take into consideration what you are analyzing. For example, if I was analyzing raspberries and I found, say ten (10) whole insects, thrips or something like that, I wouldn't be surprised at all. I can't consider that filth. It is something that is there, something you can't do anything about.

Q. Referring now to the sample No. 2 which

(Testimony of John Spinelli.)

was on Count 3. You have indicated that you found the product was moldy. Is that a result of the manufacturing process or due to improper storage conditions?

A. It could be a little of both. In other words, if your spaghetti was improperly dried you [357] might have mold develop after a certain length of time, and if your product was improperly stored, you could have mold develop.

Q. Mr. Spinelli, did you make, or have you made any tests or calculations on the quantity basis to determine the relative proportion weighed by the volume of insect fragments that you found in relationship to the total volume or total weight of the product you sampled?

A. No. As a general rule you don't make those when you are analyzing these products. You don't weigh what you find. It is very light, you might say. You have a particle there that is a few tenths of a millimeter in length. The weight is almost insignificant. It would run in parts of a million.

Q. As far as the weight is concerned. What about the relative proportion of it in volume, that is, a total volume of the insect fragments in relationship?

A. Well, volume and weight would be about the same thing. You couldn't make a distinction there.

Q. Well, assuming, Mr. Spinelli, that there were ten (10) fragments in the sample of analysis that you used, what would be the relationship in parts

(Testimony of John Spinelli.)

per million or parts per thousand to the total volume?

A. Parts per million? Oh, I don't know, possibly two or three (2 or 3) parts per million, something on that order. I am guessing on that. I am quite certain though it wouldn't [358] be much more than that if you actually went out and weighed a moth and you would probably find it weighed on the order of, oh between five and 10 (5 and 10) milligrams probably.

Q. About five or ten (5 or 10) milligrams?

A. Yes.

Q. And these insect fragments, about how large are they in comparison to the total weight of the moth?

A. Oh, I don't know. One moth would probably give you about, if it was ground up, probably give you one or two hundred (100 or 200) insect fragments.

Q. And besides these fragments you found as a result of your microscope examination would you say roughly—

A. Yes, that is about right, very small fragments.

Q. So that the total volume of the insect fragments that you discovered in relationship to the total volume of the sample you used was roughly, would you say one or two (1 or 2) parts per million?

A. Something on that order. If you were calculating that out it would run in parts per million.

(Testimony of John Spinelli.)

Q. And the same would be true, would it, so far as the weight is concerned?

A. That is right. You have to make a few assumptions. You would have to assume the weight of the moth had the same density as the spaghetti, but it is so inconsequential in making that kind of a determination that you could safely [359] assume that it would be in parts per million.

Q. Could you give us some example now what you mean parts per million in ordinary daily examples?

A. Oh, probably the foreign particles floating around in this room run over four or five (4 or 5) parts per million. A glass of water perhaps has several parts per million of suspended solids.

Q. You say you took, made microscopic slides, did you? A. That is right.

The Clerk: Defendants' Exhibit A-7 for identification.

Q. Handing you what has been marked as Defendants' Exhibit A-7 I will ask if you can identify these?

A. These are some of the filter papers that I have put between two pieces of glass just in case somebody wanted to see them.

Q. Well, are these the slides?

A. These are some of the slides, yes, that were made.

Q. Is it possible to retain and preserve these slides for any length of time? A. Certainly.

Q. How would you do that?

(Testimony of John Spinelli.)

A. Well, there are a couple of ways you could do it. I have put them in these, between two (2) pieces of glass, is one way. It probably isn't the most satisfactory way. You [360] could put them in a petri dish and preserve them that way.

Q. Over what period of time could they be preserved?

A. I could say indefinitely because insect fragments won't decompose.

Q. Years?

A. Years. You could remove your fragments and mount them on a slide.

Q. Now, these are the actual slides that you took?

A. Yes, these are the actual slides I have made, yes.

Q. Can you pick out one of those slides and refer to your analyses and reports and pick out one on which there was some fragment on that you found?

A. I haven't bothered to mark these. I think I marked one. No, I didn't. I can't pick out an insect fragment without a microscope, but probably some of these are insect fragments here (indicating a slide). You can't positively make an identification by just looking at them because they are similar. Without a microscope some of these things appear similar. Now, take a look at all the dots on that thing (indicating a slide). You couldn't pick out anything and say it was an insect fragment, but some——

(Testimony of John Spinelli.)

Q. One is marked on the back by the figure eight (8).

A. Yes, I haven't my notebook and am not positive that I could correlate it with——

Mr. Yothers: I will offer these in [361] evidence.

Mr. Sager: I have no objection.

The Court: They will be received.

(Defendants' Exhibit A-7 marked for identification and admitted in evidence.)

Q. Mr. Spinelli, you referred to the nature of the product. What is the nature of the product you had under analysis at this time, I mean, insofar as your determination of filth?

A. I had a product made from wheat, flour and semolina. That is what I mean by nature.

Q. Well in so far as relationship to presence or absence of insect fragments, what is the nature of the product?

A. Well, I would expect to find some insect fragments in any product made out of wheat.

Q. And where the product is made from semolina, would that have any bearing on it?

A. Not from experience, but from what I have read on the manufacture of semolina—I have never been to a mill where they make semolina, but I understand it is screened through a very much rougher type of a screen than flour. Flour is bolted through silk and I would say it would be possible to obtain insect fragments. Mills aren't entirely free of in-

(Testimony of John Spinelli.)

sect fragments, very few of them are, so if you are going to make a product out of something that has the possibility of [362] some insect fragments there, I don't see how you would be too astounded if you found insect fragments in your finished product. There is no attempt in the manufacture of macaroni to rescreen any of these semolina—in other words, it is taken and made directly into macaroni. I think I am right there.

* * *

Cross-Examination

By Mr. Sager:

Q. You say you expect to find insect fragments in any product made from wheat? Do I understand that, Mr. Spinelli?

A. Yes, I would expect to find them, yes. I am not saying I can go out and find them all the time. In other words, if I went out and bought a loaf of bread or something like that, it is possible that there might be some insect fragments there, yes.

Q. It is a fact that in a number of these flour samples here you found no contamination?

A. That is true.

Q. About half of what you examined?

A. That is true.

Q. So, at least fifty per cent (50%) of the flour that was taken from this basement had no contamination whatever that you could discover? [363]

A. That is true, but I believe you will find that macaroni is—there is very little flour used in the manufacture of macaroni. It is mostly semolina.

(Testimony of John Spinelli.)

Q. Aren't some of these samples in which you found no contamination semolina?

A. Probably one or two (1 or 2), yes, sir.

Q. These slides that are marked here as defendants' Exhibit A-7, do you know whether they were—I understand from you that they are the papers resulting from your analyses of these various samples?

A. That is right.

Q. Do you have them identified so you know which sample they are from?

A. I believe on the back you will find a number.

Q. Are they from the sample of the finished macaroni product?

A. Some of them, yes.

Q. Are some of them semolina or flour?

A. From both.

Q. They don't show all the samples you took?

A. No, they don't.

Q. You say you can't identify these insect fragments at any time without a microscope?

A. I beg pardon?

Q. Do I understand that you can't [364] identify these insect fragments under any conditions without a microscope?

A. No, I wouldn't make an attempt to identify insect fragments without a microscope unless it was so large that I could say yes, that looks like an insect head or an insect leg or something like that.

Q. Well, if you had the entire capsule of a larva could you identify that?

A. Absolutely.

Q. If I understand you correctly, all the analy-

(Testimony of John Spinelli.)

ses that you made were composites of the total sample?
A. That was correct.

Q. That is true of the finished product as well as of the flour and semolina samples?

A. That is true.

Q. You made no individual analyses of any one of these sub samples?

A. No. I can give you a reason for that.

Q. That is the fact, that you didn't?

A. That is the fact, yes. For example, out of this one I took two (2) subs and took approximately a hundred fifteen grams (115 gm.) out of each sub to make an official sample.

Q. This sample that you say showed some mold, is that the one you didn't bring down?

A. That is right.

Q. Was that the reason for your not [365] bringing it in because of it?

A. It wasn't in good condition. I didn't bring it in. I have it.

Q. The mold that you observed, of course, would have no effect upon absence or presence of the insect fragments?

A. I wouldn't say that because mold to me indicates in a product like that, might indicate some excess moisture, but I can't answer that question positively. I wouldn't attempt to answer it positively because I am not sure.

Q. Well, mold is not the result of insect fragments?

(Testimony of John Spinelli.)

A. Oh, no, the mold is not the result of insect fragments, no.

Q. And the insect fragments are not the result of mold? A. No, absolutely no.

Q. So, you would find the same number of insect fragments in there, whether it was moldy or not moldy? A. That is right, that is right.

Q. I understood in making an analysis of the whole food you used two hundred twenty-five grams (225 gm.) so that actually what you have here is one (1) analysis of two hundred twenty-five grams (225 gm.) from five (5) different samples?

A. Right.

Q. And altogether you had how many of [366] those sub samples?

A. Individual samples, you want me to give the total number?

Q. That is right, yes. A. Thirty-two (32).

Q. In other words, you were supplied with thirty-two (32) samples and you made analyses from five (5) of them?

A. That is right. I was supplied with these samples on the 24th.

Q. I am not criticizing your effort, Mr. Spinelli. You stated, I believe, that in making analyses of the flour and semolina you used one hundred grams (100 gm.). Is that in accordance with—

A. No, fifty grams (50 gm.) in accordance with the rules. I doubled my samples and doubled everything accordingly.

Q. Well, do you know the reason for the stand-

(Testimony of John Spinelli.)

ard process prescribing fifty grams (50 gm.) for flour or semolina as against two hundred twenty-five grams (225 gm.) for the finished food?

A. The reason for that?

Q. Yes.

A. I imagine it is to facilitate digestion.

Q. Well, you mean that the flour and semolina is harder to digest in bulk than is the finished product?

A. No, it is not harder to digest. The [367] method for flour is somewhat different than the method for macaroni products. In other words, when you analyze flour you are just using a pancreatin without hydrochloric acid treatment.

Q. Well, but the standard process provides or prescribes the use of fifty grams (50 gm.) for flour and semolina and you used a hundred (100) so you didn't follow the prescribed standard?

A. I followed the prescribed standard in this way, that I used the method and my result would not be altered, whether I used fifty (50) or a hundred grams (100 gm.).

Q. Well, the reason that they prescribe fifty grams (50 gm.) rather than a hundred (100) is because of difficulty in the digestive process? In other words, I assume that, and since they prescribed two hundred twenty-five grams (225 gm.) for the finished product, that that digests easier than the flour or semolina, is that correct?

A. Well, that is correct. However, if you double your amount of pancreatin you can obtain just as

(Testimony of John Spinelli.)

good a digest on a hundred grams (100 gm.) as you can on fifty grams (50 gm.).

Q. Could you obtain the same degree of digestion on two hundred twenty-five grams (225 gm.)?

A. If I was using straight flour?

Q. Yes. A. I would say probably. [368]

Q. And could you with five hundred grams (500 gm.)?

A. I wouldn't make an attempt to analyze five hundred grams (500 gm.) in one beaker. I'd use several subs.

Q. You feel that you could use two hundred twenty-five grams (225 gm.) of the flour and semolina, the same quantity that is prescribed for the finished product and obtain equally as accurate results as with the fifty (50) that is prescribed?

A. Now are you talking about the same thing or are you talking about spaghetti in one case and semolina in another case, or semolina in all cases?

Q. My question is, you feel that you could use two hundred twenty-five (225)—you used two hundred twenty-five grams (225 gm.) for the spaghetti?

A. That is right.

Q. Is it your statement that you could use two hundred twenty-five grams (225 gm.) of semolina or flour and accomplish as accurate results as by using fifty grams (50 gm.) of semolina or flour?

A. Well, I haven't made any attempt to do that but I would say I could in the case of semolina.

Q. But not in the flour?

A. Not the flour, I don't think.

(Testimony of John Spinelli.)

Q. In semolina there would be no difference between——

A. You see, well, semolina is just the type [369] of product you have, would make a little difference, more granular and doesn't tend to glum up you might say, as flour would.

Q. When did you graduate or receive your degree, Mr. Spinelli? A. 1949.

Q. 1949? A. Yes.

Q. You received a degree in chemistry?

A. I received a degree in Bachelor of Science.

Q. In chemistry?

A. No, not in chemistry. I majored in chemistry.

Q. What is your degree in?

A. I have a Bachelor of Science Degree.

Q. In any particular subject or——

A. No.

Q. You have been working with this same concern since then?

A. I have been working with this concern since July, 1949.

Q. You worked there part time while you were in school?

A. No, I worked there full time. I had eight (8) credits that I needed in order to get my degree and I could have taken those——

Q. You worked full time the last year you [370] were in school, is that correct? A. Yes.

Q. That is the Food and Chemical Research?

A. Food, Chemical and Research Laboratories.

(Testimony of John Spinelli.)

Q. They are commercial chemical analysts; is that their business?

A. Yes, we do consulting work and development work and analyses.

Q. Do you work on analyses of other products than food? A. Yes.

Q. What portion of your work is food analyses?

A. About fifty per cent (50%).

Q. You have analyzed other macaroni and spaghetti products than this one? A. I have.

Q. How many would you say?

A. Oh, since I have been there I probably analyzed about, made forty (40) determinations on spaghetti and macaroni.

* * *

A. (Continuing): On flour and macaroni products probably forty (40). It could be a little more. I don't think any less.

Q. In that do you include each sample as [371] one examination

A. Each sample as one (1) analysis.

Q. Were all of those forty (40) analyses for filth or were they for— A. Filth.

Q. In your analyses do you make food analyses for other purposes than determination of filth?

A. Yes, we do.

Q. So that part of your analyses of food products is for other purposes than determination of filth? A. That is right.

(Testimony of John Spinelli.)

Redirect Examination

By Mr. Yothers:

Q. Mr. Spinelli, you indicated all analyses made were composites. Why were they composites, sir?

A. Because of limited time mostly.

Q. Would that make any change or any difference in the results obtained in the fact that you used composites?

A. Yes. If I had analyzed each sample individually the count may have varied up and down. You can't tell. I have no way of knowing unless I analyzed them all individually how the count might have varied. I have a fairly good cross section here.

Q. Your composites then were a cross section, an average as it were, is that correct?

A. That is right.

Q. By the way, Mr. Spinelli, taking the same sample and under the same laboratory conditions, would two (2) analysts analyzing the same sample arrive at the same result?

A. They would arrive at approximately the same result. For example, if I had a count of five (5), another analyst wouldn't necessarily get a count of five (5). He might get a count of eight (8) or three (3).

Q. And that is due to what, sir?

A. Well, distribution of insect fragments in macaroni products is anything but uniform.

(Testimony of John Spinelli.)

Recross-Examination

By Mr. Sager:

Q. An analysis of each of these subsamples which you composited could easily show a range of fragments from two (2) to three (3) up as high as seventeen (17), couldn't they?

A. From my results?

Q. No, I mean the analysis, separate analysis of each of the sub samples. If another analyst [373] found—you wouldn't question his findings if he found as high as seventeen (17) fragments in any one of those samples?

A. I wouldn't question another analyst's findings. As a general rule we don't unless there is—

* * *

Q. (Continuing): I never question another analyst's findings if I know that he is capable of doing these analyses. We have had, on occasion, to refer certain cases in our laboratory and we don't question their analyses?

Q. Did you find any moth scales in any of your analyses?

A. On one I believe I found what appeared to be a moth scale, yes.

Q. Just on one?

A. Part of a moth, yes.

Q. You recognize moth scales, do you, Mr. Spinelli?

A. Oh, yes.

Q. You couldn't confuse those with the wheat hull?

(Testimony of John Spinelli.)

A. No, not—I don't believe you could confuse a moth scale. You have color there and bits of hair. No, you couldn't.

Q. By the way, these moth scales, that is the powdery stuff that comes off on your fingers if you pick up a moth, isn't it?

A. No, that isn't my interpretation of a [374] moth scale, no.

Q. What is a moth scale?

A. Well, moth scale is just merely a part of the moth that might slip off, a scaly portion of your moth, probably body part, and I don't see how you could identify a powdery substance as a moth.

Q. You don't think it is that powdery substance that comes off a moth? A. No.

Q. Your digestion in this analysis digests some part of the insect fragments or contamination of the product doesn't it?

A. Probably the internal parts. It wouldn't digest the casings or the wings or, you might say, head, legs, stuff like that it wouldn't digest.

Q. But the softer tissues of the larva or the moth, they are digested along with it?

A. They might be digested, the internal parts. I mean, if you pulled out a larva you probably wouldn't find much left of the insides. You might have just a casing.

Q. And, of course, eggs, they are digested, are they not?

A. No. It is possible to pull eggs out, to float eggs out. As a general rule you don't do that. You

(Testimony of John Spinelli.)

make—if you are looking for insect eggs you would use something [375] different altogether.

Q. You'd use different process?

A. You would use a different process you mean? Yes.

Q. Well, the reason is this process wouldn't bring them out, isn't it?

A. No, this is not a good process for bringing out insect eggs.

Q. That is what I say.

A. That is right, yes.

Q. Your analysis here wouldn't have disclosed normally insect eggs?

A. No, it wouldn't disclose insect eggs, no.

Q. Can you tell the difference between these fragments, if it is a fragment of a larva or a moth in the adult stage?

A. If you have a certain part you might be able to. In other words, if you had a wing part, if you had a body part, you might tell by color. In other words, you might find a beetle part. They are pretty easy to identify by their color. They are brown and they are quite readily identifiable, and other insect fragments such as a moth would be. You can distinguish——

Q. Well, in your analyses here you didn't find any beetle parts, did you? A. Yes, I did.

Q. Is that what these fragments are that [376] you found?

A. Some are beetle parts, yes.

Q. You can distinguish moth particles also?

(Testimony of John Spinelli.)

A. I didn't distinguish my fragments between species, if that is what you are driving at.

Q. Well, are you able to say whether they were moth fragments or larva fragments?

A. Yes, I believe in one of my samples I did specifically mention that I had some larva parts.

Q. Well, would that be a moth larva or some other larva, or could you say?

A. It could be a moth larva. [377]

* * *

The Court: You may proceed.

MORRIS J. HUBERT

being first duly sworn on oath was called as a witness on behalf of the defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. Will you state your full name?

A. Morris J. Hubert.

Q. How do you spell your last name?

A. H-u-b-e-r-t.

Q. What is your address, sir?

A. Route 1, Box 985, Kent, Washington.

Q. And where are you employed, sir?

A. The Quartermaster Corps, Inspection Division, United States Army.

Q. How long have you been so engaged, sir?

A. Three (3) years.

Q. What are your duties, sir?

(Testimony of Morris J. Hubert.)

A. Well, my duties consist of going in a plant and sampling the end items and checking the markings and packaging on the products.

Q. And in May, April, May and June of 1951, did you have occasion to be present in the Golden Grain Macaroni plant here in the city of Seattle?

A. Yes, on many occasions. [378]

Q. On approximately how many occasions, sir?

A. Oh, six (6) or seven (7) times approximately.

Q. That was in line of your duty as Inspection Corps of the Quartermaster part of the Army?

A. Yes.

Q. Did they have a contract to purchase macaroni from Mr. Dedomenico at that time?

A. Yes.

Q. Do you know approximately how much macaroni was sold to the Army in that period of time?

A. Well, approximately three hundred thousand pounds (300,000 Lbs.).

Q. And did you draw the samples yourself?

A. Yes.

Q. What did you do with those samples?

A. I submitted a composite sample to the Sixth Army Laboratory here in Seattle and another composite to our Chicago laboratory, and a portion of this sample was also turned over to the contractor who in turn submits it to a commercial laboratory for an analysis.

Q. So that the sample you take, as I understand it, is divided into three portions, one given to commercial laboratory, one to the Sixth Army and one

(Testimony of Morris J. Hubert.)

in Chicago, is that right? A. Yes. [379]

Q. After those analyses are made is there—
what is done with the samples?

A. Well, the samples, I don't know what happens to the samples after the laboratory gets through with them. We just get a report on the analyses.

Q. And do you have your records and reports of those?

A. We keep those records for six (6) months only and then they are destroyed.

Q. So that you do not have any records at all?

A. No, sir.

Q. Do you know what the results of the analyses were?

A. Well, I can't give any figures. They evidently were all correct or we wouldn't have passed—

Mr. Sager: Just a moment. I object to that answer, your Honor.

The Court: Objection sustained, it may go out.

Q. Well, were any of the products rejected by you or by the analyst? A. No, I—

Mr. Sager: I object to that also, your Honor.

The Court: I will overrule—

Mr. Sager: He can testify as to whether he rejected any but—

The Court: Do you know of your own knowledge [380] whether or not any were rejected?

The Witness: No, sir, I don't.

The Court: The answer may go out.

Q. Mr. Hubert, in the period of time you were

(Testimony of Morris J. Hubert.)

in the Golden Grain Manufacturing plant in April, May, June of 1951, can you state whether or not as a result of those visits and inspections at the Golden Grain Manufacturing plant, it was clean, sanitary, unclean or unsanitary?

Mr. Sager: I object to that, your Honor. It calls for a conclusion of this witness.

The Court: He has testified he was there on many occasions. He can testify as to what his observation was, if he made any observation of it.

Q. (Continuing): What did you observe as to the sanitary conditions during the period of time you were there?

A. I would say the conditions were sanitary.

Q. Did you look at the plant with that in mind?

A. No, sir, I am not employed in a capacity of a sanitary inspector. This was just a personal observation.

The Court: You didn't make any particular point to observe its cleanliness or lack of it, did you?

The Witness: Well, we always look around in a plant when we go in and if we find something outstandingly bad we have to report it, but [381] otherwise unless it is brought to our attention in that way we make no reports on anything.

The Court: Did you make an inspection with that in mind to determine whether or not there was anything outstandingly wrong?

The Witness: No, sir.

Q. You didn't observe——

Mr. Sager: Just a moment. I move that his an-

(Testimony of Morris J. Hubert.)

swer that as far as he observed, or whatever it was, that the place was sanitary, that that be stricken.

The Court: The motion is granted and stricken from the record.

Q. (Continuing): Will you state whether or not you observed anything that was unsanitary then? A. No.

Q. Did you observe the general condition of the equipment and of the employees and of the employees' uniforms at that time? A. Yes.

Q. Well, state whether or not they were sanitary or unsanitary? A. They were very clean.

* * *

Cross-Examination

By Mr. Sager:

Q. Do you know just what dates you were there, Mr. Hubert?

A. No, sir, not having any records I have no way of stating definitely.

Q. Do you know for sure what months you were there? A. I was there in May and June.

Q. You don't know what date though in June or May? A. No, sir.

Q. Your statement that the uniforms looked clean, you refer to the uniforms of the employees?

A. Pardon?

Q. You refer to the employees, the uniforms of the employees that they were wearing when you say that they looked clean? A. Yes.

Q. You made no examination of the machinery, did you? A. No.

(Testimony of Morris J. Hubert.)

Redirect Examination

By Mr. Yothers:

Q. Did you recall whether or not June 19th of 1951 you were present in the plant? [383]

The Court: I can't hear you.

Q. (Continuing): Do you recall whether on June 19th you were present in the plant, Mr. Hubert?

A. Well, I can't say definitely. I was in and out of the plant many times in June.

Q. See whether or not that would refresh your recollection as to the dates you were in the plant of Golden Grain Macaroni Company (passing the witness a document). A. 25th of June.

Q. What was the date? A. 25th of June.

Q. This is a certificate of quality and condition for subsistence? A. Yes, sir.

* * *

Q. (Continuing): Handing you what has been marked as defendants' Exhibit A-8 and A-9 I will ask if you can [384] identify these?

A. A certificate of quality and condition for subsistence items.

Q. What is the general nature—how are they prepared, and—

A. They are prepared by our office after we receive the results of the laboratory analyses inasmuch as the end item is concerned, the product, and also

(Testimony of Morris J. Hubert.)

to give it, make the statement that the packaging—

Mr. Sager: Just a moment. I object to his stating what the exhibit shows.

The Court: Objection sustained.

Q. Are they part of the official records?

A. Yes.

Q. Is this a copy of the record that you refer to that has been destroyed by your office?

A. Yes.

Mr. Yothers: I will offer these in evidence.

Mr. Sager: May I inquire? Did you bring these records with you?

The Witness: No, sir.

Mr. Sager: Are they kept in your control or custody?

The Witness: No, we have no records.

Mr. Sager: These are not records [385] then from your office?

The Witness: They are copies that were submitted to the contractor. So many copies are made in duplicates and forwarded to the consignee, and the contractor.

Mr. Sager: Are any of these signed by you?

The Witness: Yes. No, they are not. I wasn't authorized to sign them at the time.

Mr. Sager: These are not any part of the records of the Army then?

The Witness: Yes, they are.

Mr. Sager: These are?

The Witness: Yes.

(Testimony of Morris J. Hubert.)

Mr. Sager: They come from the Army?

The Witness: Yes, they are duplicate copies sent out.

Mr. Sager: I mean they are not from your office now?

The Witness: Not right now, no.

Mr. Sager: You have nothing to do with the keeping of these records?

The Witness: No, sir.

Mr. Sager: I will object to them on that ground. They are not properly identified.

The Court: As I understand it, the [386] only purpose of your seeking to admit these in evidence is to indicate the time that this man was present, is that right?

Mr. Yothers: No, the purpose is for the matters contained in the exhibits themselves, your Honor, part of the official records, I think, kept in it. The originals, as the witness testified, have been destroyed. He has identified them as carbon copies which have been furnished.

The Court: Nothing in these so-called records which throw any light upon this case. It is merely a certification that the bill is correct and payment therefor has not been received. Contains information that the monies due under this contract have been assigned to the Seattle First National Bank in Seattle. It indicates the character of the contract. Other than that it doesn't throw any light upon this case except that certain tests were made and the results, that it was free from filth. With that in

(Testimony of Morris J. Hubert.)

mind—I just noticed that—I will receive them in evidence for what they may be worth.

(Defendants' Exhibits Nos. A-8 and A-9 marked for identification and admitted in evidence.) [387]

* * *

SWAIN ODDSON

being first duly sworn on oath, was called as a witness on behalf of the defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your full name please, sir.

A. Swain Oddson.

Q. Where do you live, Mr. Oddson?

A. 1906 East 80th Street, Seattle.

Q. What is your occupation, sir?

A. I am with the Sixth Area Corps for the Seattle office of the Quartermaster Corps Inspection Service.

Q. And what are your duties, sir?

A. As a general supervisor of inspectors assigned to the Seattle field and, in other words, general supervision as a head of the Seattle office.

Q. In May and June of 1951 did the Army have a contract with Mr. Dedomenico for products?

A. Yes they did.

Q. Did you have occasion to exercise your duties and responsibilities as the coordinator of the Quartermaster Inspection Corps relative to that product

(Testimony of Swain Oddson.)

purchased from the Golden Grain Manufacturing Company?

A. I didn't quite understand, I am sorry.

Q. During the period of time of June, June of 1951, [389] did you have occasion to exercise your duties and responsibilities as the coordinator of the Quartermaster Inspection Corps relative to this contract?

A. Yes, sir.

Q. And were samples taken? A. Yes, sir.

Q. And were they taken under your direction and supervision?

A. Yes, I assigned the inspector to the contract.

Q. And did you—was Mr. Hubert one of the inspectors that you assigned? A. Yes, sir.

Q. Did they have—did the inspectors have occasion to inspect the plant of the Golden Grain Manufacturing Company?

A. Well, in general observation of the plant as was stated. We are not qualified sanitary inspectors, but we do make a general observation.

Q. And did they, during that period of time of June of 1951, did they make those inspections?

A. They are supposed to.

Q. Well, do you know whether or not they did?

A. No, I don't know that.

Q. And do you know of your own knowledge whether or not any of the products purchased under the contract were, [390] was rejected during this period of time May or June?

A. As I recall, the samples drawn by the Army were not, there was no rejections.

(Testimony of Swain Oddson.)

Q. And what was the total amount that they contracted, do you recall?

A. I believe it was around three hundred thousand pounds (300,000 Lbs.).

Q. Was there a later contract also of three hundred thousand pounds (300,000 Lbs.) for a total of six hundred thousand pounds (600,000 Lbs.)?

A. You mean during that same period?

Q. Yes, wasn't there a total of six hundred thousand pounds (600,000 Lbs.)?

A. Well, I don't recall the exact figure, but there were additional contracts. [391]

* * *

WILLIAM J. CARR

being first duly sworn on oath, was called as a witness on behalf of the defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your full name.

A. William J. Carr.

Q. What is your address, Mr. Carr?

A. 11530 Evanston Avenue.

Q. Seattle?

A. Seattle, 33, yes.

Q. What is your occupation, sir?

A. I am Chief Chemist of the Seattle Branch of the Sixth Area Army Medical Laboratory.

Q. Have you had occasion, sir, to make analyses

(Testimony of William J. Carr.)

of macaroni and food products in the course of your duties? A. Yes, sir.

Q. How long have you been Chief Chemist or engaged in that business and profession?

A. Since 1939.

Q. How many samples of macaroni and flour products have you run during that period of time from 1939?

A. I have supervised or run approximately two hundred (200).

Q. Did you have occasion, sir, to run samples of the [392] macaroni purchased by the Army under the contract with Golden Grain Manufacturing Company? A. I did, sir.

Q. 1951? A. Yes, sir.

Q. And how many analyses did you make in that period of time?

A. I believe there were six (6) samples brought to the laboratory.

Q. And did you make tests of those?

A. Yes, sir.

Q. What is your background, training and education, Mr. Carr?

A. I have a Bachelor of Science degree in biology and sciences from Seattle University. I have thirty-five (35) hours of post-graduate work in bacteriology and chemistry from the University of Washington. I have since 1943, been Chief Chemist for the Sixth Army Area Medical Laboratory at Seattle. Prior to that I had two (2) years as Assistant Chief Field Inspector for Food for the

(Testimony of William J. Carr.)

Army. Prior to that I had two (2) years Assistant Chief Chemist for Libby, McNeill & Libby, Portland office.

Q. Have you had occasion, sir, to make tests on Pure Food and Drug Administration for so-called filth tests? A. Yes, sir. [393]

Q. Are you familiar with the procedures and techniques used in those? A. Yes, sir.

Q. Mr. Carr, assuming that we had a three pound (3 Lb.) sample of macaroni, of a macaroni product, cut macaroni, and a contamination filth test was run on the sample in accordance with the accepted procedures as set forth under the Pure Food and Drug Administration, and in that sample there were five (5) insect fragments, and in another portion there were nine (9) insect fragments, and in another portion there were ten (10) insect fragments and in another portion fourteen (14) insect fragments, and in a sixth portion eight (8) insect fragments, for a total of sixty-two (62) insect fragments in six (6) portions of samples, an average of ten and one-third ($10\frac{1}{3}$) insect fragments per portion, state whether or not in your opinion that would constitute filth?

Mr. Sager: I object to that, your Honor.

The Court: Overruled.

A. I am examining these six (6) samples for the Army?

Q. Yes.

A. According to Pure Food and Drug Regulations we would accept them.

(Testimony of William J. Carr.)

Mr. Sager: If your Honor please, I move that that be stricken.

The Court: The answer may go out. [394]

Q. Whether or not in your opinion that would be filth, sir?

A. In examining for the Army—

The Court: Answer the question. Does that constitute filth in your opinion?

The Witness: Am I allowed yes or no, your Honor?

The Court: Yes.

A. Yes.

Q. And in assuming, sir, that you had another sample—did you say your answer was yes?

A. The question was, is it filth. I am only allowed yes or no. My answer is yes.

Mr. Yothers: Your Honor, I claim surprise and ask permission that I be permitted to ask this witness some leading questions.

The Court: All right, go ahead.

Q. Mr. Carr, did you not state to me in answer to the same question that I asked you previously yesterday and again this morning that in such a situation that would not constitute in your opinion filth?

A. You are right, but I started to qualify my questions. At the time I was talking to you, sir, we were discussing Army products. The question as I understood it was relative to Pure Food and Drug regulations. [395]

The Court: Is there a difference?

(Testimony of William J. Carr.)

The Witness: Well, your Honor, we have an administrative tolerance of which I have not received permission to divulge. Under certain circumstances, depending on a product, certain amount, in this case insect fragments, may be found and the product still found acceptable to the Army.

Q. Well, the presence of insect fragments, ten (10) insect fragments to a portion, did you not state that that would not, in your opinion, constitute filth? A. That is right.

Q. And is that your testimony now?

A. That is right.

Q. So that if there is not in excess of ten (10) insect fragments per sample, the average on a sample, in your opinion it would not constitute filth, is that correct? A. Yes, sir.

* * *

Cross-Examination

By Mr. Sager:

Q. I understand your last answer is it would constitute filth? A. Would not.

Q. In other words, what you are basing your answer on is that the tolerance of the [396] Army allows?

A. Yes, I am basing that answer entirely upon that.

Q. And you are not attempting to express an opinion as to what actually constitutes filth under the Food Act? A. No, sir. [397]

DR. PAUL V. GUSTAFSON

being first duly sworn on oath, was called as a witness on behalf of the Defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your name please, Doctor.

A. Paul V. Gustafson.

Q. And where do you reside?

A. The street address?

Q. Yes. A. 19345-47th N.E., Seattle.

Q. And are you a doctor of medicine, sir?

A. Yes, sir.

Q. And where do you practice or have been practicing?

A. I teach in the University Medical School.

Q. What do you teach, sir?

A. I teach in the microbiology department. My chief responsibility is paracitology.

Q. What is that?

A. That is the realm of medical problems concerned with animal causitive agents. Includes very tiny ones, the worm group and some arthropod groups.

Q. And where did you receive your degree? Briefly outline your qualifications and background, sir.

A. Medical degree from the University of [398] Chicago, PH degree from University of Illinois. That was in zoology.

(Testimony of Dr. Paul V. Gustafson.)

Q. How long have you been at the University Medical school?

A. I think I am in my fifth year, since 1948.

Q. Do you happen to deal with the question and problems of the effect of microscopic organisms and animals, insects on human life and health? Is that included in your studies?

A. The direct effect of such fragments on human health, I don't believe so. That isn't a part of my work. The effect of living insects or other animal products, living products on human health, is in my realm, yes.

Q. And, Doctor, are you familiar generally with the processes and procedures of preparation and use and consumption of macaroni and spaghetti and other products of that nature?

A. The processing for sale to the consumer or processing before eating?

Q. Before eating, the use of it?

A. I have cooked spaghetti.

Q. And, Doctor, assuming that you have a half a pound ($\frac{1}{2}$ lb.) of spaghetti and that in that half pound ($\frac{1}{2}$ lb.) of spaghetti there was as much as twenty-two (22) insect fragments, moth scales and a capsule identified in size under the microscope roughly represents four and four-tenths (4.4) [399] parts per million by volume, state whether or not in your opinion that would be filthy?

Mr. Sager: I object to that, your Honor.

The Court: Let him answer.

A. I can't see how that would be called filthy.

(Testimony of Dr. Paul V. Gustafson.)

Q. And would that have any effect, sir, on the health——

Mr. Sager: I object to that because the question of whether or not the product is injurious to health is wholly immaterial.

The Court: Objection sustained.

* * *

Cross-Examination

By Mr. Sager:

Q. Doctor, if you had an opportunity to choose between a product containing the amount of insect contamination that counsel stated in his question to you, and one which was free, which would you choose?

Mr. Yothers: I object to that, your Honor. I don't think that is material.

The Court: I think the answer would be obvious. He would choose the one free from contamination. You don't have to answer that question. [400]

* * *

MURIEL DEDOMENICO

being first duly sworn on oath was called as a witness on behalf of the defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. Will you state your full name, please?

A. Muriel Dedomenico.

Q. Where do you live?

(Testimony of Muriel Dedomenico.)

A. 6014 Lake Shore Drive.

Q. Are you related to Paskey Dedomenico?

A. By marriage.

Q. And how long have you been married?

A. Twenty-one and a half (21½) years.

Q. Have you any children? A. Three (3).

Q. Are you an officer or stockholder in the Golden Grain Macaroni Company?

A. I am a director.

Q. Member of the Board of Directors?

A. Yes.

Q. How long have you so served?

A. Five (5) or six (6) years, I believe.

Q. And were you such in June and July of 1951? A. Yes.

Q. Do you recall where Mr. Dedomenico was in July [401] of 1951?

A. Yes, he was in San Leandro.

Q. He was not present here in Seattle?

A. No, sir.

Q. Do you know when he left?

A. I don't know the exact date. It was around the first of July.

Q. And how long was he down there?

A. Well, he was gone until about the 26th of July.

Q. Mrs. Dedomenico, are you familiar with the manufacturing processes of the Golden Grain Manufacturing Company? A. Yes, sir.

Q. Have you been in the plant? A. Often.

Q. Were you in the plant during the period of

(Testimony of Muriel Dedomenico.)

time June and July of 1951? A. Yes.

Q. And how many times were you in the plant?

A. That would be hard for me to answer. I don't keep a diary.

Q. Well, was it several times, a few times, or—

A. Let's say two (2) or three (3) times.

Q. And did you go through it, up on the second floor where the manufacturing processes are?

A. I may have, I can't remember that far back. [402]

Q. When you were in the plant in June and July of 1951, did you make any determination or inspection to determine the general conditions as to sanitation and cleanliness of the plant during those times? A. I always look around, yes.

Q. How was it at that time?

A. Everything looked all right to me.

Q. Well, was it clean or unclean?

A. It was clean, yes.

Q. Was it sanitary or unsanitary?

Mr. Sager: I don't think she is qualified to answer that, your Honor.

The Court: Objection sustained.

Q. (Continuing): Did you observe anything during those times, Mrs. Dedomenico that—I will withdraw that, I guess it is the same question. During the period of time you have been married to Mr. Dedomenico have you had occasion to visit other macaroni plants? A. Yes, sir.

Q. Approximately how many?

A. Oh, I imagine about twenty (20).

(Testimony of Muriel Dedomenico.)

Q. And have those other macaroni visits been over an extended period of time? A. Yes.

Q. Any visitations made in the year 1951 or the last [403] year? A. 1951? I can't remember.

Q. As to general cleanliness and sanitation, how does the plant, Golden Grain plant, compare to the other plants that you and your husband have visited during that period of time?

Mr. Sager: I object to that.

The Court: Objection sustained. I have heretofore ruled on that subject, counsel. I am not deciding this case upon the basis of other comparisons between other macaroni plants.

* * *

(Whereupon, at twelve o'clock noon, a recess was had until two-thirty o'clock p.m., December 5, 1952. [404] In the interim period a visit to the Golden Grain Macaroni Company plant was made as indicated, by the Court, Clerk, Crier, and reporter, also all counsel heretofore noted and defendant Paskey Dedomenico. Upon return court was reconvened at two-thirty o'clock p.m. and said counsel being present the following proceedings were had, to wit:) [405]

PASKEY DEDOMENICO

being first duly sworn on oath, was called as a witness on behalf of himself and the other defendant, and testified as follows:

Direct Examination

By Mr. Yothers:

Q. State your name, please.

A. Paskey Dedomenico.

Q. Where do you live, Mr. Dedomenico?

A. 6014 Lake Shore Drive.

Q. Seattle? A. Seattle, Washington.

Q. How long have you resided there, sir?

A. Eleven (11) years.

Q. Are you married? A. Yes, sir.

Q. Children? A. Three (3) children.

Q. What are their ages?

A. One is eighteen (18), one fifteen (15), two (2) boys, and one (1) girl, eight (8).

Q. And you are the husband of Mrs. Dedomenico that testified just before lunch?

A. Yes, I am.

Q. Did you have any connection with the Golden Grain Macaroni Company? [406]

A. I am the president of the company.

Q. And how long have you been associated with the Golden Grain Manufacturing Company?

A. I have been associated with the Golden Grain Macaroni Company for twenty-four (24) years.

Q. What are your general duties with relationship to the company, sir?

(Testimony of Paskey Dedomenico.)

A. At the present time I am the president of the company and general manager of the Seattle plant.

Q. And in June and July of 1951 what was your relationship to the company?

A. I was president of the corporation and general manager of the Seattle plant.

Q. Mr. Dedomenico, were you present here in Seattle in June and July of 1951?

A. On June 28, 1951, I left for San Francisco.

Q. And when did you return?

A. I returned on July 25th.

Q. You were absent then from the city of Seattle and from the plant here in Seattle during all that time? A. Yes, I was.

Q. Do you have any other employees working for you out there at the plant? A. Yes, I do.

Q. How many employees are there? [407]

A. Oh, I have got approximately fifteen (15) employees working for me out here in Seattle.

Q. And is that same true in June and July of 1951?

A. Well, I think the crew was a little smaller at that time.

Q. In your absence, Mr. Dedomenico, who was in charge of the plant, who is the custodian?

A. Joe Mulvaney is the custodian of the plant.

Q. In Mr. Mulvaney's absence who is in charge of it?

(Testimony of Morris J. Hubert.)

(Testimony of Paskey Dedomenico.)

A. If Mr. Mulvaney is not here he has another there who takes charge of the plant.

Q. And what is his name?

A. Al Whitehead.

Q. And who was in charge of the plant when you left in—during the period of time you were gone in June and July of 1951?

A. I left for San Francisco June 28th. Joe Mulvaney was in charge of the plant.

Q. In what capacity is Mr. McDiarmid employed?

A. Mr. McDiarmid is the sales manager.

Q. Does he have any responsibility or duty with relationship to the plant and the manufacturing and production?

A. No, sir, I have never given Jack McDiarmid any responsibility in regards to the plant whatsoever. [408]

Q. Now, in June and July of 1951 and immediately prior thereto, had any instructions been issued by you to the employees? Did you issue to the employees instructions relative to the procedures they should follow in the manufacturing and production of your products out there particularly with reference to the cleaning procedures and the sanitation and so on?

A. They have always had instructions. The people that work for me have always been told to keep the plant clean. If they notice anything out of order, to report it to the office immediately, and if they couldn't correct the matter, that I would see that it was corrected at once.

(Testimony of Paskey Dedomenico.)

Q. And in your absence who were they to report to?

A. Well, in my absence they reported to Joe Mulvaney.

Q. Well, specifically with reference now to the cleaning process, what instructions had you issued to your employees in, particularly in June and July of 1951, Mr. Dedomenico?

A. Well, in regards to the flour equipment, Joe and I had got in a huddle and we had decided to put the flour equipment on once a month basis of tearing it down for cleaning. That meant a twelve (12) hour job and if he thought that it was necessary, to do it oftener. It was up to him to use his own judgment.

Q. And when was the last time it was cleaned just [409] prior to the time——

A. The flour equipment was cleaned under my supervision on June 25th.

Q. On June 25th. Now, you were present this afternoon, were you not, when we made inspection of the plant out there? A. Yes, I was.

Q. Can you tell us the relationship in terms of cleanliness, compare the plant as it was today and as it was when you left for San Francisco?

A. In my opinion I had the plant cleaner on the day before I left for San Francisco than it was today.

Q. What instructions did you give to the employees with relationship to the number of times

(Testimony of Paskey Dedomenico.)

they were to clean and how often the cleaning was to be done?

A. The employees are cleaning that plant every day.

Q. What do they do? A. They stop—

Q. I am speaking now of June and July of 1951.

A. Well, as you noticed today, there are several departments, a manufacturing department, a packing department, there is a shipping department and a receiving department. The production department clean up after they work.

Q. What do they do? [410]

A. They shut down ahead of time. They clean up, they sweep, they clean the machines, they do everything that is necessary to clean the place. The packing department does the same thing. The shipping department does the same thing.

Q. And those same procedures were followed, sir, in June and July?

A. Yes, they were.

Q. The same procedures have been followed all the time?

A. Yes, those were my instructions.

Q. Did you, immediately prior to the time that you left and when you returned, make an inspection of the plant?

A. Yes, when I got back from my trip I took a walk through the plant.

Q. And did you, is it your customary practice to make your inspections of the plant?

(Testimony of Paskey Dedomenico.)

A. Yes, it is my customary practice to, when I arrive at my plant to walk through the building and back to the office and if I notice anything that is unusual I report it to the man in charge or to that department.

Q. What do you mean by anything unusual, Mr. Dedomenico?

A. Well, let us say that I don't like the way the basement housekeeping is, why I tell Joe and I tell him to straighten it out. If I don't like the shape that the shipping department is in, why I tell them to line it up and [411] straighten it out.

Q. When you walk through the plant do you make an inspection for sanitation?

A. I make a visual inspection, yes I do.

Q. What is the purpose of that, sir?

A. Because I want to run a sanitary plant.

Q. What methods of procedures do you use to, for moth control and for rodent control, and did you use during the period of June and July of 1951?

A. We have had the United States Insecticide Company doing our work for several years. Their man comes in every week and takes care of any rodent problem that the building may have. We also purchase from them their spray material. Now along those lines, at another inspection when Inspector Allen came in and checked the building I asked him if he had any suggestions and Mr. Allen said, "I don't think you are using the proper spray material." I said, "All right, what do you

(Testimony of Paskey Dedomenico.)

suggest?" So he said, "I suggest that you call the sanitary engineer over at the Fisher Flouring Mills," which after Mr. Allen left our building, I did. I called the sanitary engineer at the Fisher Flouring Mills and he told me—— [412]

* * *

Q. What did you do, not what somebody told you, but what did you do?

A. I purchased the fly spray that Mr. Allen recommended from the United States Insecticide Company and we proceeded to use that.

Q. Is that the two per cent (2%) chlordane spray that——

A. Yes, it is.

Q. Was that used by you during that period in June and July?

A. Yes, it was.

Q. And what is the purpose of that, sir?

A. Well, in the twenty-four (24) years I have been in the macaroni business the industry and ourselves have had this moth as a pest that we have always had to keep after, and we use this fly spray or insecticide, whatever you want to call it, to keep the number of moths in our plant down to a minimum.

Q. Mr. Dedomenico, were you present in court when Mr. Mulvaney testified as to the actual methods that they used in cleaning the equipment and everything? [413]

A. Yes, I was.

Q. Would your testimony along that line be substantially the same?

A. Yes, yes, just the same.

Q. Tear it down, vacuum it out, paint it and the

(Testimony of Paskey Dedomenico.)

same procedure followed as to the driers and as to the trays? A. Yes.

Q. And that process, as I understand it, is continuous? A. Continuous.

Q. Do it all the time? You are doing part of the plant sometime and part of the plant some other time, is that correct? A. That is right.

Q. On the incoming products of raw material, Mr. Dedomenico, what procedures do you adopt relative to making tests on those?

A. If our men are unloading the cars they have instructions to check the cars and if they notice that there is any insects like moths or anything else, to report it to me at the office that in such and such a car they found one (1) moth or whatever the trouble may be, and I do remember of Al Whitehead reporting to me that he had found a moth on one of the flour sacks at one time.

Q. Well, do you make tests? [414]

A. Yes, I happen to be the buyer for flour for both companies and we do run tests. We run protein and ash and filth tests.

Q. Now there was some testimony with Mr. Shallit relative to the presence of moths and larvae and pupae and webbing in this grinder there in your plant. What can you tell us about the grinder?

A. Well, the grinder that was there in the plant was purchased from the Hunt Fontana Food Company that went out of business in Hayward, California. On one of my trips to San Francisco and San Leandro, why my brother Vincent and I pur-

(Testimony of Paskey Dedomenico.)

chased a continuous automatic unit and this grinder and we had it shipped to the Seattle plant and I was——

Q. Was that grinder in use?

A. The grinder was not in use.

Q. When did you finally put the grinder into use, or is it in use yet?

A. The grinder was not put into use until after July 19th of 1951.

Q. Do you know how long after the 19th it was——

A. Well, I put on my book here—I make memorandum of everything more or less that goes on in the plant and I am looking at this date of July 19th and it was put in use after July 19th.

Q. This United States Insecticide Company which you [415] refer to, Mr. Dedomenico, how often did they make their weekly inspections and——

A. It is usually every week. Sometimes they lag as long as ten (10) days, but they are supposed to be on a weekly inspection tour.

Q. And what do they do when they come out?

A. Their man comes in and sets bait for rodents and if there is anything that he should tell me, he either writes me a little note or tells it to me personally.

* * *

Cross-Examination

By Mr. Sager:

Q. Mr. Dedomenico, you were present there on July 31st when Mr. Allen and Mr. Shallit came there for the second inspection?

(Testimony of Paskey Dedomenico.)

A. Yes, I was.

Q. They asked your permission to inspect the plant on that occasion? A. Yes, they did.

Q. Did you give them permission?

A. Yes, I gave them permission.

Q. Do I understand you would not have given them permission had you been there on the 19th?

Mr. Yothers: I don't think that is [416] material, your Honor, whether he would or not have given them permission.

The Court: Objection will be overruled.

A. I would have given them permission.

Q. You would have given them permission?

A. Yes.

Q. Well, that is what McDiarmid did according to your understanding, is that correct?

A. I understand Mr. McDiarmid gave them permission in my absence, yes.

Q. And you would have had you been there in his stead?

A. I would have given the inspectors permission to look at the plant, yes, I would have.

Q. You learned after you came back that they had inspected the plant on the 18th and 19th?

A. Yes.

Q. And you also learned that it was with Mr. McDiarmid's permission? A. Yes.

Q. You approved that then, did you?

Mr. Yothers: I object to this, your Honor. I don't think it is material at all.

The Court: The objection will be overruled.

(Testimony of Paskey Dedomenico.)

A. Well, I don't believe that Jack McDiarmid should [417] have given the inspectors permission. In the first place he didn't have no right to. In the second place, he was only the sales manager and in the third place, I never did give him any authority to let anybody in that plant, and in the fourth place everybody in my employ has been told to let nobody in unless I let them in.

Q. Did you tell Mr. McDiarmid that?

A. Yes, he knew that.

Q. Did you object to him having given them permission? A. Yes, I told him that.

Q. You didn't want them to inspect the——

A. Yes, but if I had been there I would have let the boys in.

Q. You were present at this hearing at Mr. Monfore's office, were you?

A. Yes, I was present at that hearing.

Q. Isn't it a fact that at that hearing Mr. McDiarmid said he was the sales manager of the Seattle plant and acts as manager in your absence?

A. No, I think Mr. Monfore got that mixed up. He was the sales manager.

Q. Isn't it a fact——

A. Everything else that is in there Mr. Monfore put it in.

Q. Isn't it a fact that at the close of the hearing [418] Mr. Monfore——

A. No, I don't remember that part of it.

Q. ——Mr. Monfore said, "I asked Mr. Dedomenico and Mr. McDiarmid if the preceding record

(Testimony of Paskey Dedomenico.)

of the hearing as I dictated it represented a true report of the hearing and they agreed that it did."

A. I don't recall that.

Q. You don't recall. Do you recall there was a statement dictated to the stenographer in your presence?

A. I don't remember if it has even been dictated.

Q. You don't remember a stenographer coming into the hearing room and a statement being dictated to her? You don't recall that?

A. He made that up after.

Q. You don't recall her being there?

A. No.

Q. Do you recall Mr. Lofsvold being there?

A. Yes, I remember him now.

Q. This United States Insecticide concern you say that take care of your rodent problem?

A. Yes.

Q. Have you ever had them fumigate your entire plant? A. Yes.

Q. At one time?

A. Yes, they cyanided our place.

Q. When? [419]

A. It has been several years now because we were told that the spray would be just swell for moth conditions.

Q. When you cyanide your plant you have to close it down and lock it up and seal it for a period of twenty (20)—a day or so?

A. Oh, we were advised against cyanide.

(Testimony of Paskey Dedomenico.)

Q. Would you answer that question, please?

A. Would you repeat?

Q. When your plant was fumigated with cyanide that required a complete closing of the plant and sealing of it while it was being cyanided?

A. Yes.

Q. Was that done by this same concern?

A. I don't know about that. I don't know.

Q. You were advised that that would kill everything living in the plant, weren't you?

A. No.

Q. You mean you weren't advised as to that, or you hadn't any information about it?

A. Well, I wasn't advised as to that phase of it.

Q. That is, the fumigation, that was cyanic acid gas?

A. It does not kill eggs.

Q. I said it was cyanic acid gas?

A. Yes, it was.

Q. I take it that you are in over-all charge of the [420] Seattle operation?

A. Yes, I am.

Q. You are the final authority so far as the Seattle plant is concerned?

A. Yes, I am.

Q. And that is true whether it respects the shipping or sales or production department or any of the rest of it?

A. Yes.

Q. You spend the major portion of your time at the plant?

A. Yes, I do.

Q. Now, you say the employees clean at the end of their production day, in the production department at least?

A. Yes.

Q. And you don't mean by that that they go

(Testimony of Paskey Dedomenico.)

into this machinery and take down the machinery every day?

A. Well, they don't tear down the flour equipment every day, but they clean their machines off that they are working from.

Q. But with reference to these conveyors and elevators, you don't mean to say that they are opened every day and cleaned?

A. No the elevators are not cleaned every day.

Q. As I understood, you and Mulvaney agreed that would be done once a month? [421]

A. That is right, or sooner, if necessary.

Q. With respect to Mr. Mulvaney's testimony here the other day, you said that in substance you would testify the same as he did on matters that he testified about.

Mr. Yothers: Well, the cleaning.

Q. (Continuing): Is that correct?

A. Well, I can't recall every word now that Joe Mulvaney said, but with regard to the cleaning and about cleaning up every day and everything he said up here, yes.

Q. Well, would you corroborate his testimony on cross-examination as well as on direct examination? A. Will you repeat that, please?

Q. Would you corroborate his testimony on cross-examination as well as his testimony on direct examination? A. Yes. [422]

ALFHILD H. REYNOLDS

being first duly sworn on oath, was called as a witness on behalf of the defendants and testified as follows:

Direct Examination

By Mr. Yothers:

Q. Would you state your full name, please, Mrs. Reynolds? A. A-l-f-h-i-l-d H. Reynolds.

Q. Where do you live?

A. 7015 - 24th N.E.

Q. And are you presently employed?

A. No.

Q. Were you formerly employed by the Golden Grain Macaroni Company? A. Yes, I was.

Q. For how long?

A. Well, I went to work for them in September, 1942.

Q. And you worked for them until?

A. April of 1952.

Q. Approximately ten (10) years?

A. Approximately.

Q. You were working for them in June and July of 1951? A. Yes, I was.

Q. Mrs. Reynolds, will you describe the instructions [423] that you received relative to cleaning up and maintenance around the machines you were working on and the other employees at that time in June and July of 1951?

A. Well, we were always told to clean up where we were working after we were—at the end of our day's work.

(Testimony of Alfhild H. Reynolds.)

Q. Clean the machines?

A. To clean the machines and clean our floor, leave everything clean, and if there was any evidence of anything that should not be there, why it was to be reported to the foreman.

Q. And were those procedures followed by you and by the other employees during June and July of 1951? A. They were.

Q. Did you ever receive any instructions or any of the other employees receive instructions to pick up any products off the floor and put them in a bag?

A. Well, we had hog feed bags which we were instructed to place any refuse in.

Q. And during the ten (10) years you worked there, did you ever see thousands of moths there in the plant?

A. I wouldn't say thousands of moths, no. I saw moths but not thousands of them.

Q. In June and July of 1951 did you see any moths during that period of time, or do you recall?

A. Well, I can't say. [424]

* * *

Cross-Examination

By Mr. Sager:

Q. Were you there when the inspectors from the Food and Drug Administration inspected the plant in July of 1951? A. Yes, I was.

Q. Were you on the same floor where they were making the inspection?

A. Well, they inspected both places.

(Testimony of Alhild H. Reynolds.)

Q. Where were you working at that time?

A. In the shipping department on the first floor.

Q. You weren't upstairs? A. No.

Q. You had no opportunity then to see the material that they gathered during the course of their inspection? A. No.

Q. Now, this cleaning up that you did, that would be at the close of the day after the production was shut down? A. Yes, sir.

Q. And that consisted largely of cleaning the particular machine you were working on, that is, the outside and sweeping up around?

A. Yes. [425]

Q. You didn't go into the machines or take off the covering or anything of that sort?

A. About once a week we did that.

Q. Did you ever participate in the cleaning of these elevators or flour conveying machines?

A. No, I had nothing to do with that.

Q. In June or July of 1951 was any substantial portion of your work on the top floor?

A. No.

Q. You didn't work up there?

A. No, most of my work was on the first floor.

Q. Do you recall whether you ever had the opportunity to observe the cocoons and webbing accumulated on the wall up on the first floor near the flour hopper as shown in this picture?

A. I have seen webbing, yes.

Q. On the wall, on the surface of the wall?

(Testimony of Alfhild H. Reynolds.)

A. I didn't notice any on the surface of the wall, no.

Q. Then you didn't see this particular lot?

A. I can't say that I did.

Q. You observed the cocoons too, did you, that these larvae make? A. Yes, I have seen them.

Q. Around in the equipment and screens and that sort of thing? [426]

A. Yes, I have seen them because I have helped clean.

Q. They were there more or less all the time, were they not?

A. Yes, they are in that type of work.

* * *

Mr. Yothers (Continuing): Your Honor, we have three (3) additional witnesses whose testimony will be substantially the same as Mrs. Reynolds' as to the procedures, instructions they received relative to the cleaning procedures, but counsel has indicated he will stipulate that the testimony would be the same in the interest of saving time. With that stipulation, why we would rest our case.

Mr. Sager: Are they present employees?

Mr. Yothers: Yes, they are.

Mr. Sager: I will agree.

The Court: The Court will accept the stipulation. Any rebuttal? [427]

KATHERINE JOHNSON

being first duly sworn on oath, was called as a rebuttal witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name, please.

A. Katherine Johnson.

Q. Where do you live?

A. Seattle, at 2220 N. 46th.

Q. And by whom are you employed, Miss Johnson?

A. By the Food and Drug Administration.

Q. In the Seattle office? A. Yes, sir.

Q. In what capacity?

A. As stenographer.

Q. Showing you a document that has been identified as plaintiff's Exhibit 8, Mrs. Johnson, do you recognize that? A. Yes, I do.

Q. Did you prepare that? A. Yes, sir.

Q. And at whose dictation?

A. Mr. Monfore's.

Q. And on the occasion when that was dictated to you, do you recall that? [428]

A. Yes, I do.

Q. Who was present at that time?

A. Mr. Monfore, Mr. Dedomenico, Mr. McDiar-mid and Mr. Lofsvold, Mr. Monfore's assistant.

Q. And was that dictation given to you in the presence of the four (4) men you have named?

A. Yes, it was.

(Testimony of Katherine Johnson.)

Q. Thereafter did you transcribe your dictation? A. Yes.

Q. Of which this is a copy? A. Yes.

Q. Now, have you had an opportunity to compare your original shorthand notes with a copy of your transcript? A. Yes, I have.

Q. And is this Exhibit 8 a true and accurate copy? A. Yes, it is.

Q. Of the notes, of your stenographic notes taken at that time? A. Yes.

Q. The last paragraph of this, Miss Johnson, reads: "I asked Mr. Dedomenico and Mr. McDiarmid does the proceeding or record of hearing as I have dictated it represent a true report of the hearing, and they agreed that it did." Was that statement dictated to you?

A. Yes, sir. [429]

Q. Likewise in the presence of these same four (4) men? A. Yes.

Q. Do you recall if anything, what was said or done by Mr. Dedomenico or Mr. McDiarmid on that statement?

A. I remember that they agreed that this was a true statement of the hearing.

* * *

^ Cross-Examination

By Mr. Yothers:

Q. Mrs. Johnson, Mr. Dedomenico and Mr. McDiarmid—Mr. McDiarmid and Mr. Dedomenico did not dictate that to you, did they, but Mr. Monfore?

(Testimony of Katherine Johnson.)

A. That is right.

Q. And you work for Mr. Monfore?

A. Yes, sir.

Q. You were following his instructions as to the transcribing of the notes and everything?

A. I was simply taking his dictation. [430]

* * *

Q. He instructed you to transcribe and prepare this exhibit? A. Yes, sir.

Q. Now, these are not the exact words or statements made by Mr. Dedomenico at all, but they are what Mr. Monfore said was told, isn't that right?

A. Mr. Monfore's dictation, yes.

* * *

Mr. Yothers: Excuse me, your Honor, may I reopen for the purpose of making a motion relative to the testimony again on the grounds originally objected to, the testimony of Mr. Shallit and Mr. Allen that they had no authority or permission to enter into the plant and make the inspection or take and prepare the exhibits? I'd like the record to so show.

The Court: The record will reflect that and the record will also show the objection is again overruled. Take a short recess. [431]

* * *

Mr. Yothers: Motion to dismiss, your Honor, argued as to Paskey Dedomenico, the motion to dismiss will be very brief, your Honor. [432]

* * *

The Court: Under the authorities heretofore cited by the Government upon this point, the motion for dismissal is denied and motion for acquittal is denied. [433]

* * *

The Court: I find the corporation and the individual defendant guilty as to Count 2, guilty as to Count 3, guilty as to Count 4, guilty as to Count 5 and guilty as to Count 6. I find them not guilty on Count 1.

The purpose of these statutes is to see to it that all precautionary steps are taken to prevent situations of this kind. Statutes are to be literally construed in order to prevent the transportation in interstate commerce of decomposed [446] infested or filthy food products.

Now, the corporate defendant as well as the individual defendant should have learned a very bitter experience from what occurred in 1947, the evidence of which is before this Court. They should have exercised the most scrupulous care to avoid this situation. It might not be amiss to make a suggestion that it would be well to employ a man solely for the purpose of guarding against these conditions. They simply did not keep their house in good order.

The evidence of filth is abundant in this case.

Now, I fine the corporation in the sum of Five Thousand Dollars (\$5,000.00). I fine Paskey De-domenico in the sum of Five Thousand Dollars (\$5,000.00). And I am willing to entertain a motion for probation in regard to a prison sentence, if you care to make it.

Mr. Yothers: Yes, your Honor, I do so.

The Court: The Court will grant your motion for probation and Mr. Dedomenico, I will place you on probation for a period of three (3) years, during which time it will be necessary for you to report to the probation officer at stated [447] intervals, that you be guided in your future conduct with regard to the operation of your plant by his instructions. Are you willing to accept the terms of that?

Mr. Dedomenico. Yes, your Honor.

* * *

[Endorsed]: Filed February 25, 1953. [448]

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS RE MOTION OF DEFENDANTS FOR A NEW TRIAL

Before The Honorable Edward P. Murphy,
United States District Judge.

* * *

January 8, 1953, 9:45 A.M.

Mr. Yothers: Your Honor, by agreement with counsel, so far as the defendant Paskey Dedomenico is concerned, we'd like to consider this as a motion for an acquittal or, in the alternative, a motion for a new trial.

The Court: Let me understand this. I examined the papers casually. Is the motion for a new trial directed to both defendants?

Mr. Yothers: The motion is directed as to both of the defendants.

* * *

The Court: I have considered your arguments. I have listened to them. The case is relatively fresh within my mind and I am satisfied that the Court arrived at a proper decision. Accordingly, the motion for a new trial made on behalf of both defendants is denied.

* * *

[Endorsed]: Filed February 25, 1953.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 of the United States Court of Appeals for the Ninth Circuit and Rule 39(b) (1) of the Federal Rules of Criminal Procedure, I am transmitting herewith all the original papers in the file dealing with the above-entitled action, and that said papers constitute the record on appeal from the Judgment against Golden Grain Macaroni Company, Inc., filed Dec. 8, 1952, and from the Judgment, Sentence and Order of

Probation of Paskey Dedomenico, filed Dec. 8, 1952, to the United States Court of Appeals for the Ninth Circuit, said papers being identified as follows:

1. Indictment, filed June 19, 1952.
2. Bond, Paskey Dedomenico, filed July 11, 1952.
3. Marshal's Return on Bench Warrant, Paskey Dedomenico, 2-11-52.
4. Marshal's Return on Summons, filed July 16, 1952.
5. Resolution authorizing Paskey Dedomenico to enter plea of not guilty, filed Aug. 11, 1952.
6. Amended Written Notice to Produce Samples for Independent Analysis, filed Nov. 17, 1952.
7. Affidavit of Robert A. Yothers, filed Nov. 17, 1952.
8. Affidavit of Paskey Dedomenico, filed Nov. 17, 1952.
9. Letter, Food & Drug Adm. to Yothers, dated 11-14-52, filed Nov. 17, 1952.
10. Affidavit of Personal Bias and Prejudice of Judge, filed Nov. 19, 1952.
11. Certification of Counsel of Record, filed Nov. 19, 1952.
12. Letter, Food & Drug Adm. to Yothers, dated 11-20-52, filed Nov. 20, 1952.
13. Motion to Produce Samples, filed Nov. 21, 1952.
14. Order denying application for change of judges, filed 11-22-52.
15. Praecipe of Plaintiff for subpoenas in blank, filed 11-25-52.
16. Waiver of Jury, filed Nov. 28, 1952.

17. Praecipe, defendant, for subpoena, Mulvaney, filed 11-29-52.

18. Praecipis for subpoenas, McDiarmid, et al., behalf defendants, filed Nov. 29, 1952.

19. Praecipe for subpoena by defendants to Custodian of Records, Seattle Health Dept., filed Nov. 29, 1952.

20. Praecipis for subpoena, Floretta, et al., by defendants, filed 12-5-52.

21. Judgment, filed Dec. 8, 1952. (Golden Grain Macaroni Co.)

22. Judgment, Sentence and Order of Probation, filed Dec. 8, 1952, (Paskey Dedomenico).

23. Motion defendants for new trial, filed Dec. 9, 1952.

24. Marshal's Returns on Subpoenas, Kemnard, and 6, filed Dec. 9, 1952.

25. Marshal's Returns on Subpoenas, Gardner, et 2, filed 12-9-52.

26. Court Reporter's Copy of Transcript of Court's Verdict and Sentence, filed Dec. 10, 1952.

27. Marshal's returns on subpoenas, McDiarmid and 5, filed 12-11-52.

28. Marshal's Return on subpoena, Custodian of Records, Seattle Health Department, filed Dec. 11, 1952.

29. Order Denying Motion for New Trial, filed Jan. 13, 1953.

30. Notice of Appeals, by both defendants, filed Jan. 14, 1953.

31. Motion for Stay of Execution and Relief Pending Review, filed Jan. 14, 1953.

32. Stay of Execution Bond Pending Appeal, filed Jan. 20, 1953.
33. Stay of Execution Bond Pending Appeal, filed Jan. 20, 1953.
34. Order to Stay Execution, filed Jan. 20, 1953.
35. Order Refunding Cash Bail, Paskey Dedomenico, filed 1-20-53.
36. Filed receipt, Clerk of Court to Golden Grain Macaroni Co. for Treasury Bond collateral, filed Jan. 20, 1953.
37. Filed receipt, Clerk of Court to Paskey Dedomenico, for Treasury Bond collateral, filed Jan. 20, 1953.
38. Designation of Record on Appeal, filed Feb. 6, 1953.

I further certify the following to be a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellants for preparation of the record on appeal in this cause, to wit:

Notice of Appeals, (\$5.00 as to each defendant), and that said fees have been paid to me by the defendants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 17th day of February, 1953.

[Seal]

MILLARD P. THOMAS,
Clerk,

By /s/ TRUMAN EGGER,
Chief Deputy.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO SUPPLEMENTAL RECORD
ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith, supplemental to the record on appeal in the above-entitled cause the following additional papers or documents:

39. Reporter's Transcript of Proceedings at trial (carbon copy), of Dec. 2, 1952, filed Feb. 25, 1953.

40. Reporter's Transcript of Proceedings at trial (carbon copy), of Dec. 3, 1952, filed Feb. 25, 1953.

41. Reporter's Transcript of Proceedings at trial (carbon copy), of Dec. 5, 1953, filed Feb. 25, 1953.

42. Reporter's Transcript of Proceedings re Motion for New Trial heard Jan. 8, 1953, filed Feb. 25, 1953 (carbon copy).

Witness My Hand and official seal this 26th day of February, 1953.

[Seal]

MILLARD P. THOMAS,
Clerk,

By /s/ TRUMAN EGGER,
Chief Deputy.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO ADDITIONAL SUPPLEMEN-
TAL RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting, supplemental to the record on appeal in the above cause the following additional papers or documents and exhibits:

43. Stipulation and Order for transmission of original exhibits, filed March 11, 1953.

Plaintiff Exhibits numbered 1 to 27, inclusive.

Defendant Exhibits numbered A-1 to A-9, inclusive.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 12th day of March, 1953.

[Seal] MILLARD P. THOMAS,
 Clerk,

By /s/ TRUMAN EGGER,
 Chief Deputy.

[Endorsed]: No. 13713. United States Court of Appeals for the Ninth Circuit. Golden Grain Macaroni Company, Inc., a Corporation, and Paskey Dedomenico, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed February 19, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13713

GOLDEN GRAIN MACARONI COMPANY,
INC., a Corporation, and PASKEY DEDOM-
ENICO, an Individual,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY

To the Clerk of the Honorable Court:

Comes now Golden Grain Macaroni Company, Inc., a corporation, appellant in the above-entitled cause, and states that on its appeal herein it will rely on the following points:

The District Court erred in overruling appellant's objections and entering the judgment dated December 8, 1952, which found the appellant guilty of offenses charged in counts II, III, IV, V and VI of the Indictment, to wit: violation of Sections 331 and 333 of Title 21, U.S.C., and which adjudged that appellant pay to the United States the sum of \$5,000.00 because:

A. Evidence offered by the United States and admitted by the court over appellant's objection to show the adulteration of food, in that it had been prepared, packed and held under insanitary conditions whereby it may have become contaminated, was obtained illegally:

(1) Officers designated by the Pure Food & Drug Administrator did not first make a request and obtain permission of the owner, operator or custodian as required by statute.

(2) The court erred in ruling that the sales manager was the custodian of the appellant's factory.

B. Evidence offered by the United States failed to prove beyond a reasonable doubt that the food complained of was adulterated because it consisted in part of a filthy substance:

(1) The insect fragment count present was infinitesimal by weight, volume or any other standard of measurement.

(2) There was no showing in evidence that the product complained of was in any sense injurious to health or safety.

(3) The trial judge erred in refusing to consider

argument and evidence on the question: "What is filth."

C. Even if guilty as charged the fine is so excessive as to indicate abuse of discretion on the part of the trial judge.

D. The trial court erred in denying appellant's motion for a new trial.

Comes now appellant Paskey Dedomenico, an individual, appellant in the above-entitled cause, and states that on his appeal herein he will rely upon the foregoing points stated by appellant corporation and incorporates them herein by reference as though fully set out. Appellant further and in addition relies upon the following points:

A. The evidence failed to show beyond a reasonable doubt that this appellant as an individual committed any act or had any intent to commit any acts which constituted offenses charged in the Indictment.

(1) Appellant was not physically present at the time when the food was allegedly introduced into interstate commerce.

(2) Appellant was not physically present at the factory when the evidence was obtained for the purpose of showing insanitary conditions.

(3) Appellant according to the evidence did not aid, abet, encourage, counsel, plan, procure, participate or in any way act as an accessory to the crime.

(4) Appellant did everything within his power

to insure that the factory would be in a sanitary condition during his absence and issued orders and instructions which, if carried out, would have prevented any insanitary condition.

Presented by:

/s/ ROBERT A. YOTHERS,

Attorney for Appellants.

[Endorsed]: Filed April 10, 1953.

[Title of Court of Appeals and Cause.]

STIPULATION CONCERNING DESIGNATION
OF THE RECORD FOR PRINTING

It is stipulated and agreed by and between the parties to the above-entitled cause by their respective attorneys as follows:

The material portions of the record in the above-entitled action are hereby designated for printing and include:

The Indictment.

Judgment against the defendant Golden Grain Macaroni Company.

Judgment, sentence and order of probation against defendant Paskey Dedomenico.

The entire District Court Reporters Transcript of oral proceedings except the pages and lines indicated below:

* * *

Omit balance of volume entitled:

Notice of Appeal.

Motion for Stay of Execution.

Order Staying execution pending appeal.

Order exonerating cash posted.

It is further stipulated and agreed that subject to the approval of the United States Court of Appeals for the Ninth Circuit, the exhibits of the plaintiff and defendant which are a part of the record on appeal certified by the District Court shall be presented to the court for consideration in said appeal in their original form and without being printed in the record on appeal.

Dated at Seattle, Washington, this 3rd day of April, 1953.

GOLDEN GRAIN MACARONI
COMPANY, INC.

PASKEY DEDOMENICO,

By /s/ ROBERT A. YOTHERS,
Attorney for Appellants.

/s/ J. CHARLES DENNIS,
U. S. District Attorney.

/s/ ARTHUR A. DICKERMAN,
United States Food & Drug Administration. Attorneys for Appellee.

[Endorsed]: Filed April 10, 1953.